

1 the Walmart's insiders) attempted to alter the meaning of the term "Walmart Marketplace" to  
2 make its synonymous with Walmart.com then used this new definition of Marketplace to  
3 whitewash the misleading statements made by McMillon to investors in FY17. See evidence  
4 of Walmart's illegal conducts.

5  
6 451. Third, the RICO Defendants backpedaled on their original assertions that the  
7 rapidly expansion in the total number of Marketplace SKUs on Walmart.com was directly  
8 correlated to Walmart's Marketplace GMV growth which drove Walmart's Ecommerce GMV  
9 growth and the profitability mix Walmart's Ecommerce business. The RICO Defendants at-  
10 tempted to alter, mutilate, and/or conceal Walmart's previous misleading statements to impair  
11 object's integrity or availability for use in the SEC investigation.

12  
13 452. Fourth, as discussed below, the RICO Defendants inserted Beal's altered  
14 11/30/16 email along with the purported Marketplace RIF list in Walmart's OSHA position to  
15 assert their affirmative defense. The RICO Defendants later provided Huynh with a copy of  
16 Walmart's OSHA position statement, knowing that once Huynh received it, he would submit  
17 it to the SEC. Thus, the RICO Defendants objective was to get Huynh to submit the RICO  
18 Defendants altered documents to the SEC to further diminish Huynh's credibility as a whistle-  
19 blower. The text below proved that David deRubertis knew of Huynh's meeting with the SEC  
20 in early Oct 2017 and that Huynh intended to share the Walmart's OSHA position statement  
21 with them.

22  
23 453. In short, the RICO Defendants perpetrated the above predicate actions in viola-  
24 tions 18 U.S.C. § 1512(c)(1) in order to effectuate prong #2 and Goal A of the WSF Coverup  
25 Enterprise's illegal coverup scheme.

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9/28/17, 9:49 AM

Hi Tri - sorry about yesterday, I had a filing deadline emergency that I had me tied up later than I thought through the later evening. I have an all day meeting today but what's your availability tomorrow and Thursday? I love the stuff you sent so far!

10/5/17, 4:02 PM

David,  
Just finished my one day meeting with the SEC. you and I need to connect tomorrow to discuss because the SEC seem to be very interest in the DOL filing and how Walmart retaliate against me. They would to get  
A copy of our DOL submission

Tri


Hi David,  
Is there a deadline for us to respond to Walmart Position?  
BTW, Sean McKessy and I will meet with the SEC in SFO either Next week or the week after.  
Tomorrow I am available from 8:30 AM to 1:00 PM  
Thursday 8:30 AM to 11:00 AM.  
Friday is very open.  
Let me know which time works best for you.  
Thanks,  
Tri

If we need to we can talk after but we definitely need to talk

10/6/17, 3:21 PM

Sorry Tri. Judge kept me in court late into Day most days this week. I can chat anytime tomorrow between 1130 and four. Let me know what sounds good at your end if that works

Cool. I will call your cell tomorrow's around 11:45 AM



### The OSHA Investigation

454. As discussed above, the RICO Defendants, specifically, the Law Firm of Payne & Fears and Seth Beal altered Beal's 11/30/16 email then attached the purported Marketplace RIF list then insert them into Walmart's position statement submitted to OSHA. The RICO Defendant perpetrated this illegal act to purportedly assert Walmart's affirmative defense i.e., Walmart terminated Huynh not because he engaged in protected activity but because of legitimately and non-retaliatory reason.

#### Pattern of Racketeering Activity: Witness Tampering —Alter, OR Conceal Document or Object in Violation of 18 U.S.C. § 1512(b)(2)(B)

The Elements of 18 U.S.C. § 1512(b)(2)(B)

18 U.S.C. § 1512(b)(2)(B) provides that:

(b) Whoever knowingly uses intimidation, threatens, or **corruptly persuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, with intent to

(2) cause or induce any person to

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding.... shall be fined under this title or imprisoned not more than 20 years, or both

### The SEC Investigation Process

455. In continuation with discussion above, the Walmart's participants through the Rescue Squad corruptly persuades another person (other members of the enterprise or co-conspirators), or attempts to do so, or engages in misleading conduct toward another person (other members of the enterprise or co-conspirators), with intent to cause or induce them to alter and/or mutilate documents and/or objects presented to the SEC, Walmart's investors, investment analysts, the Media, politicians, and the American public in order to effectuate prong #2 and Goal A of the WSF Coverup Enterprise' illegal coverup scheme. Below are examples of the predicate acts of the RICO Defendants.

- A. Caused Matthew Boyle, a member of the enterprise and a Bloomberg News Reporter, to publish alteration of evidence/facts on numerous occasions: 1) Altered evidence/facts regarding the total number of Marketplace SKUs on Walmart.com in Jun 16, 2017, 2) Altered facts and evidence in his 3/15/18 and 3/16/18 articles to purportedly assert the RICO Defendants' Truth on the Market Defense, and 3) Alter and/or conceal evidence to coverup up Walmart's artificial inflations of Jet.com FY17 and FY18 sales.
- B. Caused David deRubertis to file altered fact/evidence regarding the total number of Marketplace SKUs on Walmart.com in FY17 in Huynh's 3/15/18 complaint.
- C. Caused Francine Mckenna to publish online articles on 9/13/17 with altered fact/evidence regarding the new definition the term Walmart's Marketplace.
- D. Caused Robert Ohmes to publish investment reports on Walmart with altered facts/evidence regarding 1) the total number of SKUs on Walmart Marketplace, 2) Walmart's purported new definition of Walmart Marketplace, and 3 altered facts regarding Jet.com FY17 and FY18 sales.

1 E. Caused William H. Thompson to acknowledge the receipt of Walmart's responses  
 2 regarding inventory mark down, customer returns, and Marketplace revenue recog-  
 3 nition on Aug 7, 2017 to purportedly show that Walmart's responses was acceptable  
 per GAAP.<sup>93</sup>

4 Pattern of Racketeering Activity: Conspiracy<sup>94</sup> to Commit 18 U.S.C. § 1512(c)(2); 18  
 5 U.S.C. § 1512(c)(1); 18 U.S.C. § 1512(b)(2)(B);

6 18 U.S.C. § 1512(k) provides that:

7 Whoever conspires to commit any offense under this section shall be subject to the same  
 8 penalties as those prescribed for the offense the commission of which was the object of  
 9 the conspiracy

10 456. The framework below provides a comprehensive set of tools to prove the exist-  
 11 ence of an agreement among the RICO Defendants of the WSF Coverup Enterprise to engage  
 12 in conspiracy to violate to engage in conspiracy to violate 18 U.S.C. § 1512(c)(2); 18 U.S.C. §  
 13 1512(c)(1); 18 U.S.C. § 1512(b)(2)(B) in violation of 18 U.S.C. § 1512(k) in order to effectu-  
 14 ate Prong #2 and #3 i.e., Goal A of the WSF Coverup Enterprise' illegal coverup scheme.  
 15

17  
 18 <sup>93</sup> August 7, 2017, William H. Thompson wrote to Brett Biggs: Dear Mr. Biggs: We have  
 19 completed our review of your filing. We remind you that the company and its management  
 are responsible for the accuracy and adequacy of their disclosures, notwithstanding any re-  
 view, comments, action or absence of action by the staff.

20 <sup>94</sup> A conspiracy is a combination of two or more persons to accomplish a criminal purpose or  
 21 purposes by concerted action. In other words, a conspiracy is a partnership in crime. It is cre-  
 22 ated by an agreement to commit a crime or crimes. The existence of the agreement may be es-  
 23 tablished by circumstantial evidence. It may be shown by evidence that the alleged conspira-  
 24 tors were acting in concert in accordance with a common design, United States v. Kissel, 218  
 25 U.S. 601, 608, 31 S.Ct. 124, 54 L.Ed. 1168; Pinkerton v. United States, 328 U.S. 640, 644, 66  
 26 S.Ct. 1180, 90 L.Ed. 1489; Mendelson v. United States, 61 App.D.C. 127, 130, 58 F.2d 532;  
 27 Chadwick v. United States, 6 Cir., 141 F. 225, 241; Craig v. United States, 9 Cir., 81 F.2d  
 28 816, 822. Various persons may become members of the conspiracy at different times and may  
 play different roles in it. An individual member of the combination need not be aware of all of  
 its ramifications or be cognizant of the number or identity of all of the other participants. If a  
 person knows of its existence and intentionally takes some part in furthering it, he becomes a  
 member of the conspiracy, Mendelson v. United States, supra; Allen v. United States, 7 Cir., 4  
 F.2d 688, 699. A conspiracy to commit a crime or crimes is separate and distinct from the  
 substantive offenses



## Legal Framework to Prove the Existence of an Agreement

### Goal

#### To conceal Walmart's \$136 Billion Fraud Against Shareholders

An agreement could be proved through circumstantial evidence that defendants acted together in pursuit of a **common illegal goal**." United States v. Bishop, 1 F.3d 910, 911 (9th Cir.1993) (citation omitted). "

## Concerted and interdependence actions

**Overt acts:** United States v. Alvarez, 837 F.2d 1024, 1027 (11th Cir. 1988) (holding that proof of acts committed in furtherance of conspiracy may be sufficient to show knowing participation in conspiracy); United States v. Sarault, 840 F.2d 1479, 1487 (9th Cir. 1988) (holding that overt act need only be concrete step toward carrying out agreement, nor one that actually accomplishes goal of conspiracy); It can be a wholly innocent act in and of itself. See United States v. Masiello, 491 F. Supp. 1154, 1164 (D. S.C. 1980).

### Concerted Actions

An agreement may be either explicit or implicit, and the fact finder may infer an agreement from "a **concert of action**." United States v. Mann, 161 F.3d 840, 847 (5th Cir. 1998). United States v. Sneed, 63 F.3d 381, 385 (5th Cir. 1995) ("the jury may infer an agreement from **concert of action**"). United States v. Reveron Martinez, 836 F.2d 684, 691 (1st Cir. 1988) (holding proof of conspiracy inferable from **concert of activity**).

### Interdependence Actions

Cassiere, 4 F.3d at 1015 (holding that agreement can be inferred from "defendants' actions and the **interdependence** of activities and persons involved") (quoting United States v. Boylan, 898 F.2d 230, 241-42 (1st Cir. 1990)); Arutunoff, 1 F.3d at 1116 (holding that agreement can be inferred if "defendant's conduct [is] **interdependent** with the conduct of other conspirators," requiring defendant's activities to "facilitate the endeavors of other conspirators or the venture as a whole")

### Cover Up

In U.S. v. Smith 294 F.3d 473 (3d Cir. 2002), the 3<sup>rd</sup> Circuit found concerted actions to **cover up** the circumstances of a prisoner's death, is sufficient to prove the existing of an agreement, stating other courts of appeals have considered acts of **concealment** relevant to determining whether a conspiracy existed. See, e.g., United States v. Piche, 981 F.2d 706 (4th Cir. 1992); United States v. Bigham, 812 F.2d 943 (5th Cir. 1987); United States v. Davis, 810 F.2d 474 (5th Cir. 1987).

457. The analyses above showed the existence of an agreement among the RICO Defendants to violate 18 U.S.C. § 1512(k) because the RICO Defendants acted in concert to commit multiple predicate acts and overt acts. These acts were interdependence. For example, before Matthew Boyle could published his 3/15/18 and 3/16/18 article, David deRubertis had to insert the **\$7 Mil customer returns** impact into Huynh's complaint and the PR agencies had to line up all the experts e.g., professor, industry experts, and fund manager to purportedly comment on the immateriality of Huynh's allegations against Walmart's shareholder fraud conducts) in order to effectuate Goal A (i.e., to obtain a "Get Out of Jail Free" Card from the SEC and/or the DOJ).

Pattern of Racketeering Activity: Conspiracy to Defraud the United Violation of 18 U.S.C. § 371

The Elements of 18 U.S.C. § 371

18 U.S.C. § 371 provides that:

If two or more persons conspire either to commit any offense against the United States, or to **defraud**<sup>95</sup> the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

458. The analyses above showed the existence of an agreement among the RICO Defendants to violate 18 U.S.C. § 371 (defrauding the SEC) because the RICO Defendants acted in concert to commit multiple predicate acts and overt acts and these acts were interdependence. For example, before the Walmart Participant could go on an investor/analyst road show to whitewash evidence of Walmart's illegal conducts, David deRubertis must steal and leak the confidential information in Huynh's SEC submission to the Rescue Squad. In short, the RICO Defendants engaged in a conspiracy to defraud the SEC in order to effectuate Goal A i.e., to defraud the SEC in issuing the 4/2/2019 non-enforcement letter against Walmart.

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<sup>95</sup> The meaning of "defraud" under § 371 is more capacious than its definition at common law or in the federal mail and wire fraud statutes. See *Dennis v. United States*, 384 U.S. 855, 861 (1966) (citing *Haas v. Henkel*, 216 U.S. 462, 479 (1910)); *United States v. Rosengarten*, 857 F.2d 76, 78 (2d Cir. 1988). Section 371 reaches beyond "schemes which deprive the government of money or property" to "any conspiracy for the purpose of impairing, obstructing, or defeating \*7 the lawful function of any department of Government." *United States v. Nersesian*, 824 F.2d 1294, 1313 (2d Cir. 1987) (second quoting *Dennis*, 384 U.S. at 861) (internal quotation marks omitted). And, as long as the conspiracy seeks to interfere with a lawful governmental function, § 371 criminalizes all acts that accomplish that goal "by deceit, craft, or trickery, or by means that are dishonest." *Nersesian*, 824 F.2d at 1313 (citing *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924)).

1 Pattern of Racketeering Activity: Obstruction of Justice in Violation of 18 U.S.C. § 1503

2 The Elements of 18 U.S.C. § 1503

3 The "omnibus clause" of 18 U.S.C. § 1503 provides that:

4 "Whoever . . . corruptly or by threats or force, or by any threatening letter or communica-  
 5 tion, **influences, obstructs, or impedes, or endeavors to influence, obstruct, or im-**  
 6 **pede**, the due administration of justice, shall be fined not more than \$5,000 or imprisoned  
 not more than five years, or both."

7 "[T]he [plaintiff] must establish (1) that there is a pending judicial . . . proceeding consti-  
 8 tuting the administration of justice, (2) that the defendant knew or had notice of the pro-  
 9 ceeding, and (3) that the defendant acted with the wrongful intent or improper purpose to  
 10 influence the judicial . . . proceeding, whether or not the defendant is successful in doing  
 so."<sup>96</sup> "[A] defendant does not need to know with certainty that his conduct would affect  
 judicial proceedings . . . [i]nstead, the defendant's conduct must only have the natural and  
 probable effect of interfering with the due administration of justice."<sup>97</sup>

11 **From United States v. Bonds 730 F.3d 890 (9th Cir. 2013)**

12 "18 U.S.C. § 1503 known as the omnibus clause, is comprehensive. We have described it  
 13 as being "designed to proscribe all manner of corrupt methods of obstructing justice."  
 14 United States v. Rasheed, 663 F.2d 843, 851–52 (9th Cir.1981). The essence of the statute  
 15 is that it criminalizes conduct **intended to deprive the factfinder of relevant infor-**  
**mation**. See United States v. Ashqar, 582 F.3d 819, 822–23 (7th Cir.2009)." –

16 In United States v. Rasheed 663 F.2d 843 (9th Cir. 1981), the Ninth Circuit wrote:

17 In United States v. Ryan, supra, we said, in dicta, that "[t]he word 'corrupt' in [section  
 18 1503] means for **an evil or wicked purpose**." United States v. Ryan, supra, 455 F.2d at  
 19 734. Black's Law Dictionary defines "corruptly" to mean with "a wrongful design to ac-  
 20 quire some pecuniary or other advantage." Black's Law Dictionary 414 (4th ed. rev.  
 1968). We hold that the word "corruptly" as used in the statute means that the act must be  
 21 done with the purpose of obstructing justice. Decisions of other circuits support this posi-  
 22 tion. United States v. Ogle, 613 F.2d 233, 238 (10th Cir. 1979), cert. denied, 449 U.S.  
 23 825, 101 S.Ct. 87, 66 L.Ed.2d 28 (1980); United States v. Haas, 583 F.2d 216, 220 (5th  
 24 Cir. 1978), cert. denied, 440 U.S. 981, 99 S.Ct. 1788, 60 L.Ed.2d 240 (1979). Using this  
 definition of "corruptly," **the destruction or concealment of documents** can fall within  
 the prohibition of the statute. This holding does no violence to our rule that the catch-all

25 <sup>96</sup> United States v. Quattrone, 441 F.3d 153, 170 (2d Cir. 2006).

26 <sup>97</sup> United States v. Kumar, 617 F.3d 612, 620-21 (2d Cir. 2010) (noting that courts afford  
 27 Section 1503 "a generally non-restrictive reading") (internal quotations omitted); see also  
 28 United States v. Aguilar, 515 U.S. 593, 598 (1995) (noting that "the 'Omnibus Clause' serves  
 as a catchall, prohibiting persons from endeavoring to influence, obstruct, or impede the due  
 administration of justice").

1 provision of section 1503 is limited by the prior specific prohibitions of the statute. The  
 2 act of destroying or concealing subpoenaed documents is "similar in nature," Haili v.  
 3 United States, supra, 260 F.2d at 746, to the enumerated acts. The destruction or conceal-  
 4 ment of subpoenaed documents results in the improper suppression of evidence, and thus  
 5 the influencing, obstructing and impeding of judicial proceedings, just as much as does the  
 6 intimidation of a witness. United States v. Walasek, 527 F.2d 676, 679 n. 11 (3d Cir.  
 7 1975).

8 459. To effectuate prong #3 of the WSF Coverup Enterprise's illegal coverup  
 9 scheme, the RICO Defendants engaged in evidence destruction, mutilation, and concealment  
 10 as well as submitting false declarations to suppress material facts to obstruct Huynh from de-  
 11 fend himself against Walmart's motion summary judgement.

- 12 A. Fabrication of Seth Beal's 11/30/16 email and RIF list then filed false declaration to
- 13 purportedly assert that these documents were authentic when they were not.
- 14 B. Destruction of Huynh's outlook calendar appointment for his meeting with Seth
- 15 Beal on Oct 4 and Oct 18, 2017.
- 16 C. Fabrication of Melvenia Ha's Oct 17, 2016 then filed false declaration to purport-
- 17 edly assert that these documents were authentic when they were not.
- 18 D. Mutilation of the sent date and time of Huynh's emails by using the UTC time zone
- 19 versus the PST time zone as stipulated in the ESI Protocol order.
- 20 E. Mutilation of the headers in Huynh's emails to prevent Huynh from using them to
- 21 defend himself against Walmart's motion for summary judgement.
- 22 F. Fabrication of Beal's 12/13/16 email and RIF list then filed false declaration to pur-
- 23 portedly confirm their authenticity.
- 24 G. Fabrication of Beal's 12/14/16 email and RIF list then filed false declaration to pur-
- 25 portedly confirm their authenticity.
- 26 H. Fabrication of Melvenia Ha's purported sexual harassment report and Walmart's
- 27 Ethic and Compliance purported sexual harassment investigation report created by
- 28 Audrey Au to support Walmart's legitimate reason for Huynh's termination.
- I. Concealed and suppressed evidence and submitted false declarations to obstruct
- Huynh from proving that Huynh's role was not eliminated due to the RIF.
- J. Concealed and suppressed approximately 380 pages of documents to prevent Huynh
- from using them to prosecute his claims against Walmart.

460. The RICO Defendant obstructed Huynh from submitting material evidence  
 into the records after he submitted his opposition brief in opposition to Walmart's motion for



1 summary judgment in the following ways. First, after Huynh filed a motion to supplement his  
 2 opposition brief (DC Dkt. 127) the RICO filed their opposition brief (DC Dkt. 129) to oppose  
 3 Huynh's motion for leave to supplement his opposition brief even though they knew very well  
 4 that Huynh was entitled to supplement his opposition brief as afforded by F.R.C.P Rule  
 5 56(e).. Second, the RICO Defendants corruptly influenced District Judge Vince Chhabria to  
 6 never rule on Huynh's motion for leave to supplement (DC Dkt. 127) to obstruct Huynh from  
 7 submitting material facts into the record in order to defend himself against Walmart's motion  
 8 for summary judgement. Third, the RICO Defendants corruptly influenced District Vince  
 9 Chhabria to exploit Huynh's inability to supplement his opposition brief as an excuse to ex-  
 10 clude material facts Huynh submitting into the record to issue orders granting Walmart sum-  
 11 mary judgment (DC Dkt. 167) and dismiss all of Huynh's claim (DC Dkt. 168)

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 14 461. To ensure that Huynh would lose his lawsuit against Walmart in a clear and  
 15 convincing fashion to further mislead the Media, Walmart's investors, investment analysts,  
 16 the SEC and/or the DOJ, and the American public, the RICO Defendants corruptly influence  
 17 District Judge Vince Chhabria to obstruct Huynh's access to the court to meaningful defend  
 18 himself against Walmart motion for summary judgement and to file a motion for reconsidera-  
 19 tion to appeal District Judge Vince Chhabria's entry of final judgement dismissing Huynh's  
 20 claims against Walmart.

21  
 22 462. First, District Vince Chhabria purportedly claimed that Huynh needed his per-  
 23 mission for leave to file a motion for reconsideration then denied the request in order to ob-  
 24 struct Huynh from filing his motion for reconsideration as afforded by F.R.C.P Rule 59(e).

25 463. Second, District Judge Vince Chhabria made misleading statements regarding  
 26 the nature of Huynh's Jan 9, 2019 letter to District Judge Vince Chhabria (i.e., it was a motion  
 27  
 28

1 for reconsideration when it was not) in order to bypass the District Court's Local Rule 7-2 and  
2 7-3 in order to deny Huynh's motion for consideration on wimp versus on the merit.

3 464. Fourth, District Judge Vince Chhabria discriminated against Huynh by not af-  
4 fording Huynh an opportunity to heard for no rational basis during the summary judgement  
5 stage. District Judge Vince Chhabria cancelled the oral argument two days before the sched-  
6 ule time to prevent Huynh from telling his side of the story (i.e., pointing the district court to  
7 material facts in the record and/or answer his questions regarding material factual disputes) to  
8 defend himself against Walmart's motion for summary judgement. As the examples above  
9 show, District Judge Vince Chhabria frequently afforded other litigants in Huynh's position  
10 and their lawyers the opportunities to tell the clients side of the story before ruling on their  
11 motion for summary judgement.  
12

13 465. Fifth, Vince Chhabria discriminated against Huynh by not following the  
14 United States District Court of the Northern District of California's Local Rule 7-2 and 7-3  
15 motion practice to give the parties the opportunity to fully brief their arguments and a mean-  
16 ingful opportunity to be heard before ruling on Huynh's motion for reconsideration. Instead,  
17 District Judge Vince Chhabria denied Huynh's motion for reconsideration 3 days after it was  
18 filed. As the examples above show, District Judge Vince Chhabria treated similarly situated  
19 litigants the opportunity to be heard fully before ruling on their motion for reconsideration.  
20  
21 See X.  
22

23 466. After Huynh's filed his amended notice of appeal with the United States Court  
24 of Appeals for the Ninth Circuit (DC Dkt. 183), the RICO Defendants caused Huynh's appeal  
25 to be denied by the Ninth Circuit's merit panel through factual and legal misrepresentations  
26 and improper influences.  
27  
28

1           467. First, as discussed above even though the five nefarious ADHD FEHA claims  
 2 shotgun pleaded by David deRubertis were dismissed with prejudice by District Judge Vince  
 3 Chhabria (DC Dkt. 84), the RICO Defendants continued cited FEHA discrimination and retal-  
 4 iation claim case law in the briefs they e-filed with the United States Court of Appeals for the  
 5 Ninth Circuit to impose a higher legal standard for Huynh to survive his appeal against  
 6 Walmart.

8           468. Second, the RICO Defendants made misleading statements of facts and of law  
 9 in their answering brief opposing Huynh's opening brief in an attempt to obstruct justice to  
 10 get Huynh's appeal against Walmart denied by the Ninth Circuit. See COA Dkt. 33 –  
 11 Huynh's reply brief to Walmart's answering brief.

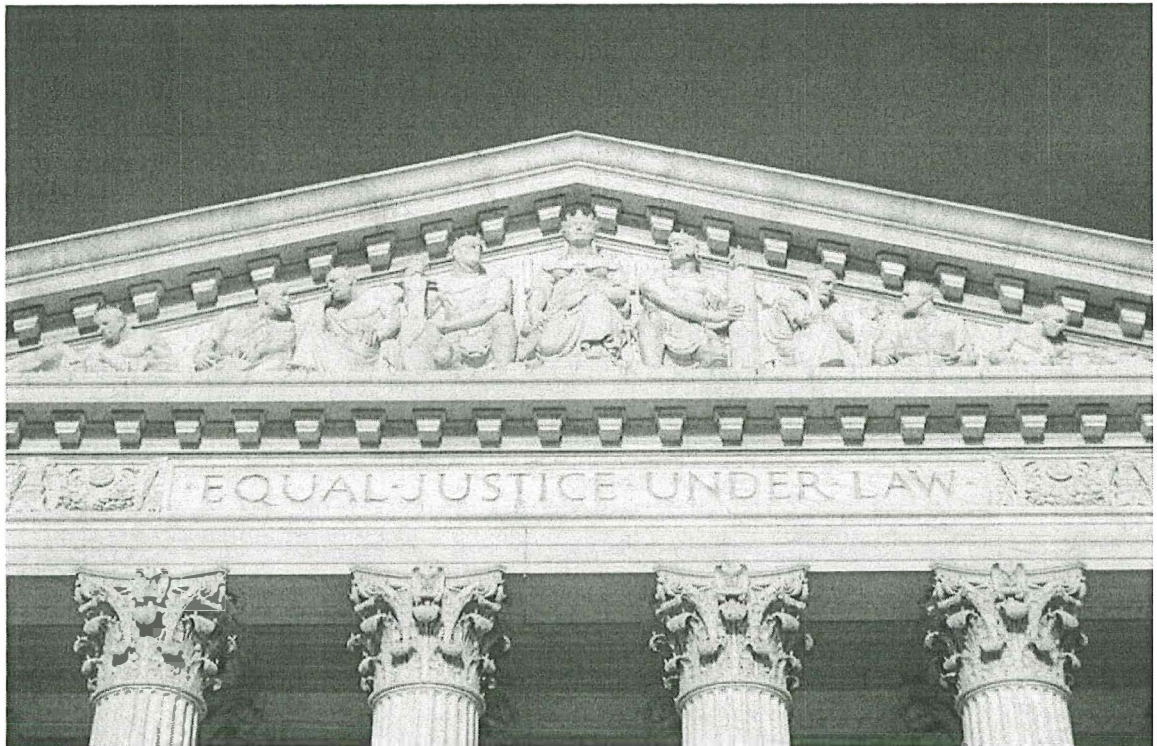
12           469. Third, upon information and belief, after failing to improperly get Huynh's ap-  
 13 peal dismissed based on the merit, the RICO Defendants improperly influenced the Ninth Cir-  
 14 cuit's panel to deny Huynh's appeal with a one paragraph ruling that based on the wrong legal  
 15 standards i.e., improperly applied the McDonnell Douglas frame work to evaluate and deny  
 16 Huynh's SOX claim and CA wrongful termination in violation of public policy claims.

18           470. In summary, the RICO Defendants' conducts during the Huynh vs Walmart  
 19 litigation were not limited to a few simple discovery violations,<sup>98</sup> but a consistent pattern of  
 20 fraudulent and illegal acts perpetrated to effectuate the WSF Coverup Enterprise's common  
 21 objective of concealing Walmart's \$140 Bil fraud against shareholders from Walmart's  
 22  
 23  
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25           <sup>98</sup> Sections 1503 and 1512 provide no defense for obstruction or tampering that occurs in a  
 26 civil suit or in discovery, and courts have created no such exception. *United States v.*  
 27 *Lundwall*, 1 F. Supp. 2d 249, 250, 256 (S.D.N.Y. 1998) (corporate officials who had withheld  
 28 and destroyed evidence during civil discovery could be prosecuted under § 1503); *United*  
*States v. LeMoire*, 474 F.3d 37 (1st Cir. 2007) (affirming conviction for witness tampering  
 under § 1512 based on pressuring a witness to lie in a civil deposition).

shareholders, investment analysts, the Media, the SEC and/or the DOJ, States agencies, politicians, and the American public. As a result of their illegal acts, the RICO Defendants made a mockery of our adversarial system of justice (a model emulated by people the world over) and suppressed the very motto of our judiciary “Equal Justice Under Law” inscribed on the façade of US States Supreme Court building.



"Equal Justice Under Law Is Not Merely A Caption On The Facade Of The Supreme Court Building; It Is Perhaps The Most Inspiring Ideal Of Our Society. It Is One Of The Ends For Which Our Entire Legal System Exists . . . It Is Fundamental That Jus-tice Should Be The Same, In Substance And Availability, Without Regard To Eco-nomic Status." – Justice Lewis F. Powell, Jr., U.S. Supreme Court Justice.

471. Criminal laws exist to punish such conduct in order to “protect the integrity of the court and the due administration of justice.” *United States v. Lundwall*, 1 F. Supp. 2d 249, 256 (S.D.N.Y. 1998) as well as proper administration of US governmental Agency proceedings. Application of these criminal statutes here is especially appropriate because



Huynh produced the full scope of the RICO Defendants' corrupted and criminal conducts in pursuit of the WSF Coverup Enterprise's common purpose. The "numerous prudential reasons [for which] prosecutors might avoid" prosecuting civil discovery abuses do not mean that "§ 1503 precludes their doing so." Id. at 254. The Second Circuit has repeatedly affirmed RICO convictions based on the corruptness of a lawyer's actions in civil litigation. See *United States v. Eisen*, 974 F.2d 246 (2d Cir. 1992); *United States v. Teitler*, 802 F.2d 606 (2d Cir. 1986). Here, Defendants did more than file pleadings in a bad case but they committed many RICO predicate crimes which are serious, nefarious and heinous.

Pattern of Racketeering Activity: Violation of Cal. Pen. Code § 92 – Bribery Statute. This is a predicate act under Section 1961(1)(A)

Cal. Pen. Code § 92 – provides.

Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the state prison for two, three or four years

In *U.S. v. Frega* 179 F.3d 793 (9th Cir. 1999), the Ninth Circuit states:

Linkage between a payment and a specific official decision is not required under California bribery law.<sup>99</sup> California Penal Code §§ 92 and 93 make unlawful bribes intended to influence any matter "which is or may be brought" before a judge for decision. A "bribe" is anything of value given or accepted with "a corrupt intent to influence, unlawfully, the person to whom it is given, in his or her action, vote, or opinion, in any public or official capacity." Cal. Penal Code § 7(6)<sup>100</sup>. As the California Supreme Court observed in con-

<sup>99</sup> The requirements for establishing a violation of the California bribery statutes at issue here, California Penal Code §§ 92 and 93, thus differ from those for establishing a violation of the federal anti-gratuity statute, 18 U.S.C. § 201(c)(1) (A). In order to prove a violation of the latter statute, the Supreme Court recently held in *United States v. Sun-Diamond Growers of California*, 1999 WL 241704 (U.S.), the government must prove a link between a thing of value conferred upon a public official and a specific "official act" for or because of which it was given.

<sup>100</sup> "The word 'corruptly' imports a wrongful design to acquire or cause some pecuniary or

nection with another section of the Penal Code, which similarly makes unlawful the receipt of a bribe intended to affect consideration "of any question or matter, upon which [the official] may be required to act in his official capacity": *People v. Diedrich*, 182 Cal.Rptr. 354, 360 (1982) (en banc). See also *People v. Markham*, 64 Cal. 157, 159 806 (1883) (holding that the crime is complete when the payment is corruptly given with intent to influence the \*806 judicial officer on any matter that may by law come before him in his official capacity, whether or not it ever does).

472. Even though, Huynh didn't have direct evidence at this time to prove that 1) the RICO Defendants communicated via US mails or the wire's transmission facilities with District Judge Vince Chhabria and Magistrate Judge Sallie Kim to corruptly influence them to consistently rule in Walmart's favor in order to effectuate the WSF Coverup Enterprise' illegal coverup scheme, and 2) the RICO Defendants conferred thing of value upon District Judge Vince Chhabria and Magistrate Judge Sallie Kim to influence the outcome of their rulings, Huynh strongly believes that this information is in the RICO Defendants' possession and will be discoverable during discovery.

473. However, as discussed above there was plenty of circumstantial evidence that proved that District Judge Vince Chhabria and Magistrate Judge Sallie Kim consistently rule in Walmart's favor. As the popular saying goes "There ain't no such thing as a free lunch"<sup>101</sup>. Therefore, in order for District Judge Vince Chhabria and Magistrate Judge Sallie Kim to rule consistently in Walmart's favor, it was more likely than not that the RICO Defendants offered them something of value in exchange for the favorable rulings.

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other advantage to the person guilty of the act or omission referred to, or to some other person." Cal. Penal Code § 7(3).

<sup>101</sup> [https://en.wikipedia.org/wiki/There\\_ain%27t\\_no\\_such\\_thing\\_as\\_a\\_free\\_lunch](https://en.wikipedia.org/wiki/There_ain%27t_no_such_thing_as_a_free_lunch)

1 Pattern of Racketeering Activity: Violation of 18 U.S.C. § 201(b)(1):

2 18 U.S.C. § 201(b)(1) provides that:

3 (b) Whoever

4 (1) directly or indirectly, corruptly gives, offers or promises anything of value to  
5 any public official<sup>102</sup> or person who has been selected to be a public official, or of-  
6 fers or promises any public official or any person who has been selected to be a  
7 public official to give anything of value to any other person or entity, with intent

8 (A) to influence any official act; or

9 (B) to influence such public official or person who has been selected to be a public  
10 official **to commit or aid in committing**, or collude in, or allow, any fraud, or make  
11 opportunity for the commission of any fraud, on the United States; or

12 (C) to induce such public official or such person who has been selected to be a pub-  
13 lic official **to do or omit to do any act in violation** of the lawful duty of such offi-  
14 cial or person;

15 474. Even though, Huynh didn't yet have direct evidence at this time to proves that  
16 1) the RICO Defendants communicated to William H. Thompson (SEC official), Mark Mar-  
17 chione (OSHA official), and Jonelle Dunn (OSHA official) via US mails or the wire's trans-  
18 mission facilities to corruptly influence these federal officials to acted favorably toward  
19 Walmart Inc. i.e., obstructing the SEC and OSHA proceedings, and 2) the RICO Defendants  
20 conferred thing of value upon William H. Thompson (SEC official), Mark Marchione (OSHA  
21 official), and Jonelle Dunn (OSHA official) to corruptly influence them to act in Walmart's  
22 favors, Huynh strongly believes that this information is in the RICO Defendants' possession  
23 and will be discoverable during discovery.

24  
25  
26 <sup>102</sup> the term "public official" means Member of Congress, Delegate, or Resident Commis-  
27 sioner, either before or after such official has qualified, or an officer or employee or person  
28 acting for or on behalf of the United States, or any department, agency or branch of Govern-  
ment thereof, including the District of Columbia, in any official function, under or by author-  
ity of any such department, agency, or branch of Government, or a juror;

475. However, as discussed above there was plenty of circumstantial evidence which proved that William H. Thompson (SEC official), Mark Marchione (OSHA official), and Jonelle Dunn (OSHA official) performed acts in their official capacity at the RICO Defendants' directions which empowered them to effectuate the WSF Coverup Enterprise's common purpose. As the popular saying goes "There ain't no such thing as a free lunch". Therefore, for the three federal officials above to act in Walmart Inc.'s favor, it was more likely than not that the RICO Defendants offered them something of value in exchange for the favorable actions.

Pattern of Racketeering Activity: Violation section 18 U.S.C. § 1952(a)(3) of the Travel Act (18 U.S.C. § 1952) in Violations of Cal. Pen. Code § 92 (California) and 18 U.S.C. § 201(b)(1) (Federal) Bribery Statutes<sup>103</sup>

The Elements of 18 U.S.C. § 1952(a)(3)

18 U.S.C. § 1952(a)(3): Elements of Travel Act violation include: (1) use of the "mail or any facility in interstate or foreign commerce," (2) with the intent to "promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity," followed by (3) performance of or an attempt to perform an act of promotion, management, establishment, carrying on, or facilitation of the enumerated unlawful activity"

"Unlawful activity" is defined in Criminal Code Section 1952(b)(2) as, inter alia, extortion, **bribery**, or arson in violation of the laws of the State in which committed or of the

<sup>103</sup> The short answer is that RICO explicitly makes it unlawful to agree to conduct an enterprise through predicate acts of state criminal violations, such as bribery. 18 U.S.C. § 1961(1) (A). As we recently noted: That RICO embodies a fundamental federal policy can scarcely be disputed. . . . RICO represents a fundamental choice by Congress to employ the heavy artillery of federal law against a variety of organized criminal endeavors involving security fraud, wire fraud, and bribery.

Govett Am. Endeavor Fund Ltd. v. Trueger, 112 F.3d 1018, 1021-22 (9th Cir. 1997). Moreover, we have often affirmed RICO convictions involving bribery of state officials, see, e.g., Jackson, 72 F.3d at 1373 (bribery of state senator); United States v. Dischner, 974 F.2d 1502, 1506-08 (9th Cir. 1992) (bribery of a mayor), as have other circuits, see, e.g., United States v. Griffith, 85 F.3d 284, 288 (7th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 117 S.Ct. 272 (1996) ("[b]ribery of local . . . officials is just the sort of corruption connoted by the term 'racketeering'"), and the United States Supreme Court, see Salinas v. United States, 118 S.Ct. 469, 472-73 (1997) (upholding RICO conspiracy convictions of deputy who accepted bribes from prisoners in county jail).



1 **United States.** The term "State" includes a **State of the United States**, the District of Co-  
 2 lumbia, and any commonwealth, territory, or possession of the United States.

3 476. As discussed above, the RICO Defendants committed predicate acts in viola-  
 4 tion of 18 U.S.C. § 201(b)(1) and Cal. Pen. Code § 92 in order to effectuate the WSF Coverup  
 5 Enterprise's fraudulent scheme. Even though, Huynh currently doesn't possess direct evi-  
 6 dence of communications between the RICO Defendants and the five federal officers dis-  
 7 cussed above, Huynh strongly believes that this information will be discoverable during dis-  
 8 covery to prove that the RICO Defendants violated 18 U.S.C. § 1952(a)(3).

9  
 10 Pattern of Racketeering Activity: Money Laundering in Violation of 18 U.S. C. § 1  
 11 956(a)(2)(A).

12 477. On information and believes, the RICO Defendants i.e., the Walmart Partici-  
 13 pants, Walmart Inc., the Rescue Squad, and the Law Firm of Gibson Dunn Crutcher, and  
 14 other Doe(s) on multiple occasions have knowingly caused the transportation, transmission,  
 15 and/or transfer of funds from Bentonville, AR, to the Rescue Squad ( California and/or Wash-  
 16 ington DC) who in turn, directly and/or through third parties to transfer fund to the other  
 17 RICO Defendants and/or their Co-conspirators via the wire with the intent that those funds be  
 18 used to promote the carrying on of unlawful activity, including but not limited to violations of  
 19 18 U.S.C. §§ 1341, 1343, 1512(c)(2), 1512(c)(1); 1512(b)(2)(B), 1512(k), 1503, 371,  
 20 201(b)(1), California. Pen. Code § 92 1952(a)(3), and 1956 (a)(2)(A), such as the stealing and  
 21 leaking of the confidential and non-public information in Huynh's SEC submission to ob-  
 22 struct the SEC investigation into Walmart's illegal conducts, the obstruction of the OSHA and  
 23 SEC investigations perpetrated by Mark Marchione, Jonelle Dunn, and William H. Thompson  
 24 and District Vince Chhabria's dismissal of Huynh civil complaint against Walmart Inc.  
 25  
 26  
 27  
 28

**Damages and Injuries Caused by RICO Defendants**

478. Each of the RICO Defendants has engaged in multiple predicate acts, as described above. The conduct of each of the RICO Defendants constitutes a pattern of racketeering activity within the meaning of U.S.C. § 1961(5).

479. Huynh was injured in his property by reason of the RICO Defendants' violations of 18 U.S.C. § 1962(c) which included but not limited to the following: 1) loss of Huynh's claim to his SEC award, 2) loss of Huynh's claim to his civil lawsuit against Walmart, 3) damaged to Huynh's personal and profession reputation, and 4) costs to appeal District Judge Vince Chhabria's dismissal of Huynh's complaint against Walmart.

480. Further, as a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiff has suffered and will suffer harm for which Plaintiff is entitled to general and special damages and all appropriate compensatory relief.

481. Defendants' conduct was a substantial factor in causing that harm. The above-described acts of Defendants, including by and through their managing agents, officers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppression. Plaintiff requests an assessment of punitive damages against Defendants in an amount to be assessed at time of trial.

482. Pursuant to 18 U.S.C. § 1964(c), Huynh is entitled to recover treble damages plus costs and attorneys' fees from the RICO Defendants.

**CLAIMS FOR RELIEF**  
**SECOND CLAIM FOR RELIEF**

(Violations of RICO, 18 U.S.C. § 1962(d))  
 (Against All RICO Defendants)

**Legal Elements of an 18 U.S.C. § 1962(d) Claim**

Under 18 U.S.C. § 1962(d), it is unlawful for any person to conspire to violate subsections (a), (b), or (c) of RICO. 18 U.S.C. § 1962(d).

The essential elements of a § 1962(d) conspiracy include: (1) knowledge of the corrupt enterprise's activities and (2) agreement to facilitate those activities. *Salinas v. United States*, 522 U.S. 52, 66 (1997); *Rose v. Bartle*, 811 F.2d 331, 366 (3d Cir. 1989). Because there is no requirement of some overt or specific act, the RICO conspiracy provision is even more comprehensive than the general conspiracy offense. *Salinas*, 522 U.S. at 63. Thus, "a defendant may be held liable for conspiracy to violate section 1962(c) if he knowingly agrees to facilitate a scheme which includes the operation or management of a RICO enterprise." *Smith v. Berg*, 247 F.3d 532, 538 (3d Cir. 2001); see also *Salinas*, 522 U.S. at 64 ("If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators."); *Dongelewicz v. PNC Bank Nat'l Ass'n*, 104 Fed. Appx. 811, 818 (3d Cir. 2004) (adopting *Smith* standard). "In certain circumstances, a defendant may be held liable under § 1962(d) even where its own actions would not amount to a substantive RICO violation." *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 372 (3d Cir. 2010). Nonetheless, "[u]nderlying a § 1962(d) claim is the requirement that plaintiff must show that defendants agreed to the commission of a 'pattern of racketeering'.

483. Huynh realleges and incorporates herein by reference each and every foregoing paragraph of this Complaint as if set forth in full.

484. The RICO Defendants have unlawfully, knowingly and willfully combined, conspired, confederated and agreed together and with others to violate 18 U.S.C. § 1962(c) as described above, in violation of 18 U.S.C. § 1962(d).

485. Using the framework above to prove the existence of an agreement to engage in a conspiracy and the specificity of the RICO Defendants' commission of the illegal predicate acts, it was more probable than not RICO Defendant had an agreement in place to violate

18 U.S.C. § 1962(d) for several reasons. First, the RICO Defendants and they had the common purpose of coverup Walmart's 140 Bil fraud against shareholder. To achieve this common purpose and the RICO committed various illegal predicate acts to effectuate a six-pronged coverup scheme discussed above. The predicate acts and/or overt acts were interdependence for example in order for the Walmart Participants to engage in the whitewash campaign, David deRubertis must steal and leak the specific allegations in Huynh's SEC submission regarding Walmart's illegal conducts. the RICO Defendants also engaged in predicate acts and over acts to conceal (prong #4 – Coverup the Coverup) the existing of WSF Coverup Enterprise's fraudulent coverup scheme. In short, the above analysis proved that it was more likely than not that the RICO Defendants entered in an agreement to conspire to violated 18 U.S.C. § 1962(c).

486. Additionally, due to the high level of coordination and interdependency of the predicate acts and over acts perpetrated by the RICO Defendants, it was more likely than not that RICO Defendants (specifically the Walmart Participants) had knowledge of the WSF Coverup Enterprise's activities.

487. In short, there was an agreement among the RICO Defendants to conspire to participate in the management and/or operation of the WSF Coverup Enterprise for the common purpose of covering up Walmart's \$140 Bil fraud against shareholders and to ensure a criminal and civil risk-free future for the RICO Defendants. Therefore, the RICO conspired to violate 18 U.S.C. § 1962(c) in violation of 18 U.S.C. § 1962(d).

488. As a direct and proximate result of the RICO Defendants' conspiracy, the acts of racketeering activity of the Enterprise, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(d), Huynh has been injured in his business and properties which include but not limited to 1) loss of Huynh's claim to his SEC award, 2) loss of



Huynh's claim to his civil lawsuit against Walmart, 3) damaged to Huynh's personal and profession reputation, and 4) costs to appeal District Judge Vince Chhabria's dismissal of Huynh's complaint against Walmart.

489. Further, as a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiff has suffered and will suffer harm for which Plaintiff is entitled to general and special damages and all appropriate compensatory relief.

490. Defendants' conduct was a substantial factor in causing that harm. The above-described acts of Defendants, including by and through their managing agents, officers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppression. Plaintiff requests an assessment of punitive damages against Defendants in an amount to be assessed at time of trial.

491. Pursuant to 18 U.S.C. § 1964(c), Huynh is entitled to recover treble damages plus costs and attorneys' fees from the RICO Defendants.

**CLAIMS FOR RELIEF**  
**THIRD CLAIM FOR RELIEF**

(Bivens Actions)  
(Against All RICO Defendants)

492. According to the Ninth Circuit Court of Appeal, a Bivens Action is the "federal official analog" of 42 USC 1983 claim i.e., one just replaces "state official" with "federal official".<sup>104</sup> Additionally, the "Fourteenth Amendment" needs to be replaced with the "Fifth Amendment". While the Equal Protection Clause itself applies only to

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<sup>104</sup> The legal framework for 42 USC 1983 and Bivens Action claims were extracted from the Ninth Circuit Section 1983 outline. [https://cdn.ca9.uscourts.gov/datastore/uploads/guides/section\\_1983/Section%201983%20Outline%202018%20-%20WESTLAW.pdf](https://cdn.ca9.uscourts.gov/datastore/uploads/guides/section_1983/Section%201983%20Outline%202018%20-%20WESTLAW.pdf)

1 state and local governments, the Supreme Court held in *Bolling v. Sharpe* (1954) that the  
 2 Due Process Clause of the Fifth Amendment nonetheless imposes various equal protec-  
 3 tion requirements on the federal government via reverse incorporation. Therefore, the  
 4 Fifth Amendment offered both due process right and equal protection right.

5  
 6 **Section 1983 provides:**

7 Every person who, under color of any statute, ordinance, regulation, custom, or usage,  
 8 of any State or Territory or the District of Columbia, subjects, or causes to be sub-  
 9 jected, any citizen of the United States or other person within the jurisdiction thereof  
 10 to the deprivation of any rights, privileges, or immunities secured by the Constitution  
 11 and laws, shall be liable to the party injured in an action at law, suit in equity, or other  
 12 proper proceeding for redress...

13 **Elements of a § 1983 Action**

14 “Traditionally, the requirements for relief under [§] 1983 have been articulated as:  
 15 (1) a violation of rights protected by the Constitution or created by federal statute, (2)  
 16 proximately caused (3) by conduct of a ‘person’ (4) acting under color of state law.”  
 17 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Or, more simply, courts  
 18 have required plaintiffs to “plead that (1) the defendants acting under color of state  
 19 law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes.”  
 20 *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986); see also *Pistor v. Gar-*  
 21 *cia*, 791 F. 3d 1104, 1114 (9th Cir. 2015).

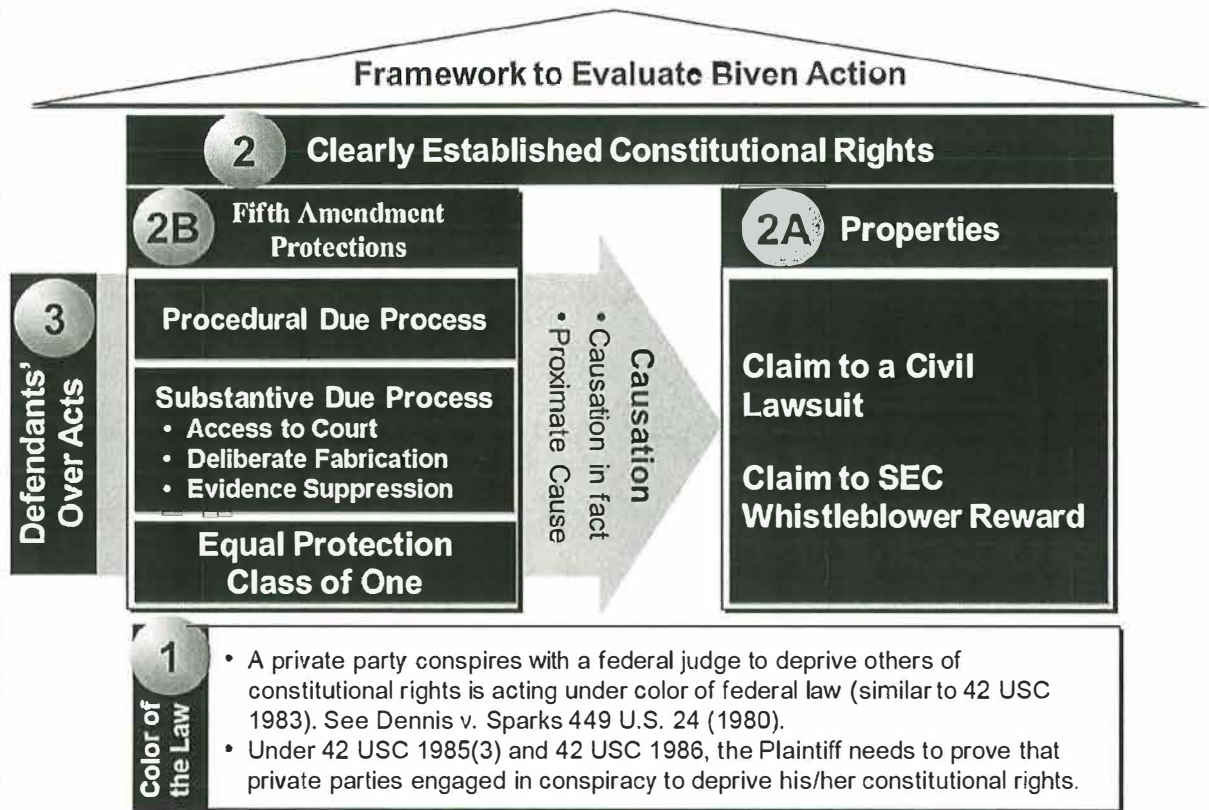
22 493. The chart below summarized the three-step analysis Huynh used to sup-  
 23 port his Biven Action claim against the RICO Defendants discussed above.

24 494. First, in order to establish that private parties conspired with federal offi-  
 25 cials to injure the Plaintiff’s constitutional rights, the Plaintiff must prove the existence of  
 26 an agreement among the parties.

27 **Private Parties**

28 Generally, private parties are not acting under color of state law. See *Price v. Hawaii*,  
 939 F.2d 702, 707–08 (9th Cir. 1991); see also *Simmons v. Sacramento Cty. Superior*  
 Court, 318 F.3d 1156, 1161 (9th Cir. 2003) (explaining that a lawyer in private prac-  
 tice does not act under color of state law). Where a private party conspires with state  
 (federal) officials to deprive others of constitutional rights, however, the private party  
 is acting under color of state (federal) law. See *Tower v. Glover*, 467 U.S. 914, 920  
 (1984); *Kimes v. Stone*, 84 F.3d 1121, 1126 (9th Cir. 1996). *Dennis v. Sparks*, 449  
 U.S. 24, 27–28 (1980);

For example, a private party conspires with a federal judge to deprive others of constitutional rights is acting under color of federal law (similar to 42 USC 1983). See *Dennis v. Sparks* 449 U.S. 24 (1980).



## **1 Existence of an Agreement to Conspire**

495. Based on the framework provided above and the specific predicate acts and/or overt acts perpetrated by the RICO Defendants in order to effectuate their common purpose (i.e., to conceal Walmart's \$140 Bil fraud against shareholders), it was more likely than not that there was an agreement among the RICO Defendants to conspire with District Judge Vince Chhabria, Magistrate Judge Sallie Kim, William H. Thompson (An SEC official) and Mark Marchione (An OSHA official) to violate Huynh's constitution rights for three main reasons. First, the RICO Defendants acted in concert in pursuit of the WSF Coverup Enterprise's illegal common purpose. Second, the

RICO Defendants executed the predicate acts and/or overt acts in a concerted and inter-dependent fashions. Third, the RICO Defendants engaged in concealment and coverup of their illegal acts (prong #6 i.e., coverup the coverup scheme). In short, the customized analysis above proved that there was an implicit agreement among the RICO Defendants to engage in a conspiracy to cause Huynh's constitutional injuries.

## 2A

### Huynh's Clearly Established Right to Properties

496. First, Huynh's lawsuit against Walmart Inc. *Huynh v. Wal-Mart Stores, Inc.* et al. Case 3:18-cv-01631-VC is a clearly established constitutional property right.

A plaintiff has a private property right in his claim of action-i.e., in the right to sue-and in his lawsuit once filed. Indeed, the U.S. Supreme Court has "squarely" held that even an unadjudicated cause of action is constitutional property (Thomas Merrill, *The Landscape of Constitutional Property*, 86 VA. L. REV. 885, 913 (2000)). In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982), the Supreme Court considered it "settled" that a cause of action is a species of property"), basing its assertion on *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Logan further noted that a "tort or discrimination action" is "a property interest.

497. Second, Huynh's claim to his SEC Whistleblower Award under the SEC Whistleblower Award program is a clearly established property interest afforded by Section 15 U.S.C. §78u-6(b)(1) of the Dodd-Frank Act which states.

498. "A property interest in a benefit protected by the due process clause results from a legitimate claim of entitlement created and defined by an independent source, such as state or federal law." *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972). A reasonable expectation of entitlement is determined largely by the language of the statute and the extent to which the entitlement is couched in mandatory terms. See *Griffeth v. Detrich*, 603 F.2d 118 (9th Cir. 1979), cert. denied, 445 U.S. 970, 100 S.Ct. 1348, 64 L.Ed.2d 247 (1980).

499. In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c),



shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to— (A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and (B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

## **2B**

### **Rights Under the Fifth Amendment of the US Constitution**

#### **Due Process Protection Under the Fifth Amendment**

500. "[N]or shall any State (Federal Government) deprive any person of life, liberty, or property, without due process of law." We have emphasized time and again that "[t]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), whether the fault lies in a denial of fundamental \*846 procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"), or in the exercise of power without any reasonable justification in the service of a legitimate governmental objective, see, e.g., *Daniels v. Williams*, 474 U.S., at 331 (the substantive due process guarantee protects against government power arbitrarily and oppressively exercised).

501. Due process claims may take either of two forms: "procedural due process" or "substantive due process." See generally *Hall v. Tawney*, 621 F.2d 607, 610-13 (4th Cir. 1980). Procedural due process requires that the procedures provided by the state (federal government) in effecting the deprivation of liberty or property are adequate in light of the affected interest. Substantive due process, however, imposes limits on what a state (federal government) may do regardless of what procedural protection is provided. See *Monroe v. Pape*, 365 U.S. at 171-72, 81 S.Ct. at 475; *Rochin v. California*, 342 U.S. 165, 169, 72 S.Ct. 205, 208, 96 L.Ed. 183 (1952)

#### **Procedural Due Process**

502. Procedural due process rules do not protect persons from the deprivation of life, liberty or property but from the mistaken or unjustified deprivation of life, liberty or

property. *Carey v. Phipus*, 435 U.S. 247, 259 (1978); *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). Fundamental requirements of procedural due process: 1) Notice and a hearing before an impartial tribunal, 2) An opportunity for confrontation and cross examination, 3) A decision based on the record; *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972); *Carey v. Phipus*, 435 U.S. 247, 266 – 67 (1978).

503. An essential right in both criminal and civil proceedings. The neutrality requirement: 1) Helps to guarantee that life, liberty or property will not be taken based on an erroneous or distorted conception of the facts or the law, 2) Preserves both the appearance and reality of fairness by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with the assurance that the arbiter is not predisposed to find against him. *Marshall v. Jericho*, 446 U.S. 238, 242 (1980); *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). Applies whenever important decisions turn on questions of fact. Only way to test their testimony is through the right of confrontation and cross-examination. -- *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970); *Greene v. McElroy*, 360 U.S. 474, 496 – 97 (1959). The decisionmaker's conclusion must rest solely on the legal rules and evidence adduced at the hearing. To show that this occurred, the decisionmaker should state the reasons for his determination and indicate the evidence he relied upon, although his statement is not required to amount to a full opinion or formal findings of fact and conclusions of law. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970)

### **Substantive Due Process**

504. In *Collins v. Harker Heights*, for example, we said that the Due Process Clause was intended to prevent government officials "from abusing [their] power, or employing it as an instrument of oppression." 503 U.S., at 126 (quoting *DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S., at 196, in turn quoting *Davidson v. Cannon*, 474 U.S., at 348). To this end, for half a century now we have spoken of the cognizable level of executive abuse of power as that which shocks the conscience. We first put the test this way in *Rochin v. California*, supra, at 172-173, where we found the forced pumping of a suspect's stomach enough to offend due process as conduct "that shocks the conscience" and violates the "decencies of civilized conduct". In the intervening 47 years we have repeatedly adhered to *Rochin's* benchmark. See, e.g., *Breithaupt v. Abram*, 352 U.S. 432, 435 (1957) (reiterating

that conduct that "shocked the conscience" and was so "brutal" and "offensive" that it did not comport with traditional ideas of fair play and decency" would violate substantive due process); *Whitley v. Albers*, 475 U.S. 312, 327 (1986) (same); *United States v. Salerno*, 481 U.S. 739, 746 (1987) ("So-called "substantive due process" prevents the government from engaging in conduct that "shocks the conscience", . . . or interferes with rights "implicit in the concept of ordered liberty") (quoting *Rochin v. California*, supra, at 172, and *Palko v. Connecticut*, 302 U.S. 319, 325-326 (1937)). Most recently, in *Collins v. Harker Heights*, supra, at 128, we said again that the substantive component of the Due Process Clause is violated by executive action only when it "can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense." While the measure of what is conscience shocking is no calibrated yard stick, it does, as Judge Friendly put it, "poin[t] the way." *Johnson v. Glick*, 481 F.2d 1028, 1033 (CA2), cert. denied, 414 U.S. 1033 (1973).

### Meaningful Access to Court Is a Substantive Due Process Right

505. **Right of Access to Court...** "It is beyond dispute that the right of access to the courts is a fundamental right protected by the Constitution." *Graham v. National Collegiate Athletic Ass'n*, 804 F.2d 953, 959 (6th Cir. 1986). \*1262 In fact, the right of access to the courts finds support in several provisions of the Constitution including: the Due Process Clause of the Fourteenth Amendment, *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974), the Equal Protection Clause, *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987), the First Amendment, *Turner v. Safley*, 482 U.S. 78, 84 (1987) (citing *Johnson v. Avery*, 393 U.S. 482 (1969)), and the Privileges and Immunities Clause of Article IV, see, e.g., *Chambers v. Baltimore Ohio R.R.*, 207 U.S. 142, 148 (1907); *Smith v. Maschner*, 899 F.2d 940, 947 (10th Cir. 1990)

506. **...Is Not Just Physical Access.** Access to courts does not only protect one's right to physically enter the courthouse halls, but also ensures that the access to courts will be "adequate, effective and meaningful." *Bounds v. Smith*, 430 U.S. 817, 822 (1977). Therefore, if a party engages in actions that **effectively cover-up evidence** and this action renders a plaintiff's state court remedy ineffective, they have **violated his right of access to the courts**. See *Bell v. City of Milwaukee*, 746 F.2d 1205, 1261 (7th Cir. 1984) ("To deny such access defendants need not literally bar the courthouse door or attack plaintiffs' witnesses.")

1           507. The right of access to the courts is substantive rather than procedural. \*347 Its  
 2 exercise can be shaped and guided by the state, *Bounds*, 430 U.S. at 825, 97 S.Ct. at 1496, but  
 3 cannot be obstructed, regardless of the procedural means applied. *Johnson v. Avery*, 393 U.S.  
 4 483, 485, 89 S.Ct. 747, 748, 21 L.Ed.2d 718 (1969) ("[I]t is fundamental that access of prison-  
 5 ers to the courts for the purpose of presenting their complaints may not be denied or ob-  
 6 structed."); see *Daniels v. Williams*, 474 U.S. 327, \_\_\_, 106 S.Ct. 662, 677, 88 L.Ed.2d 662  
 7 (1986) (Stevens, J., concurring in the judgment) ("[I]f the Federal Constitution prohibits a  
 8 State from taking certain action 'regardless of the fairness of the procedures used to imple-  
 9 ment them,' the constitutional violation is complete as soon as the prohibited action is taken . .  
 . .") (Citation omitted).

10           508. Moreover, as discussed above, the essence of the statute (18 U.S.C. § 1503  
 11 known as the omnibus clause) is that it criminalizes conduct intended to **deprive the fact-**  
 12 **finder of relevant information**. See *United States v. Ashqar*, 582 F.3d 819, 822–23 (7th  
 13 Cir.2009). The act of destroying or concealing subpoenaed documents is "similar in nature,"  
 14 *Haili v. United States*, supra, 260 F.2d at 746, to the enumerated acts. The destruction or con-  
 15 cealment of subpoenaed documents results in the improper suppression of evidence, and thus  
 16 the influencing, obstructing and impeding of judicial proceedings, just as much as does the in-  
 timidation of a witness. *United States v. Walasek*, 527 F.2d 676, 679 n. 11 (3d Cir. 1975).

17           509. Therefore, the act of evidence fabrication, destruction, mutilation, and conceal-  
 18 ment as well as filing false declaration in the court's docket essentially obstruct a Plaintiff  
 19 right to meaningful access to court to defend himself/herself against the Defendants' motion  
 20 for summary judgement. These types of overt acts violate the Plaintiff's Substantive Right to  
 Due Process.

### 21                           **Equal Protection Class of One Under the Fifth Amendment**

22  
 23           510. In *Village of Willowbrook v. Olech* 528 U.S. 562 (2000), the United States Su-  
 24 preme Court states. "Our cases have recognized successful equal protection claims brought by  
 25 a "class of one," where the plaintiff alleges that she has been **intentionally treated differ-**  
 26 **ently from others similarly situated and that there is no rational basis for the difference**  
 27 **in treatment**. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Allegheny*  
 28 *Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336 (1989). In so doing, we



1 have explained that "[t]he purpose of the equal protection clause of the Fourteenth Amend-  
 2 ment is to secure every person within the State's jurisdiction against intentional and arbitrary  
 3 discrimination, whether occasioned by express terms of a statute or by its improper execution  
 4 through duly constituted agents.'" *Sioux City Bridge Co., supra*, at 445 (quoting *Sunday Lake*  
*Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352 (1918))".

#### 6 Causation Element Under a Biven Action Claim

7 511. "In a § 1983 action, the plaintiff must also demonstrate that the defendant's  
 8 conduct was the actionable cause of the claimed injury." *Harper v. City of Los Angeles*, 533  
 9 F.3d 1010, 1026 (9th Cir. 2008). "To meet this causation requirement, the plaintiff must es-  
 10 tablish both causation-in fact and proximate causation." *Id.*

11 512. It is well settled that Bivens actions are simply the federal counterpart to §  
 12 1983 claims brought against state officials, see *Brown v. Philip Morris, Inc.*, 250 F.3d 789,  
 13 800 (3d Cir. 2001), and because tort law causation analysis serves as the basis for determining  
 14 causation in § 1983 actions, see *Hector v. Watt*, 235 F.3d 154, 160 (3d Cir. 2001) (citing  
 15 *Hedges v. Musco*, 204 F.3d 109, 121 (3d Cir. 2000)), tort law causation must govern our anal-  
 16 ysis of this Bivens claim. This standard of causation "closely resembles the standard 'foresee-  
 17 ability' formulation of proximate cause." *Arnold v. Int'l Bus. Mach. Corp.*, 637 F.2d 1350,  
 18 1355 (9th Cir. 1981); see also *Stevenson v. Koskey*, 877 F.2d 1435, 1438 (9th Cir. 1989) (not-  
 19 ing that federal courts turn to common law of torts for causation in civil rights cases).

20 513. A person "subjects" another to the deprivation of a constitutional right, within  
 21 the meaning of section 1983, if he does an affirmative act, participates in another's affirmative  
 22 acts, or omits to perform an act which he is legally required to do that causes the deprivation  
 23 of which complaint is made. See *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d  
 24 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)).  
 25 Moreover, personal participation is not the only predicate for section 1983 liability. Anyone  
 26 who "causes" any citizen to be subjected to a constitutional deprivation is also liable. The req-  
 27 uisite causal connection can be established not only by some kind of direct personal participa-  
 28 tion in the deprivation, but also by setting in motion a series of acts by others which the actor  
 knows or reasonably should know would cause others to inflict the constitutional injury. 588  
 F.2d 740, 743-44 (9th Cir.1978) (citation omitted).

514. A police officer need not have been the sole party responsible for a constitutional violation before liability may attach. "An officer's liability under section 1983 is predicated on his 'integral participation' in the alleged violation." *Blankenhorn v. City of Orange*, 485 F.3d 463, 481 n.12 (9th Cir. 2007) (quoting *Chuman v. Wright*, 76 F.3d 292, 294–95 (9th Cir. 1996)). This theory of liability "does not require that each officer's actions themselves rise to the level of a constitutional violation." *Id.* (quoting *Boyd v. Benton County*, 374 F.3d 773, 780 (9th Cir. 2004)). Instead, liability may attach if the officer has "some fundamental involvement in the conduct that allegedly caused the violation." *Id.* A theory of integral participation thus comports with general tort principles of causation applicable to a § 1983 action: "[G]overnment officials, like other defendants, are generally responsible for the 'natural' or 'reasonably foreseeable' consequences of their actions." *Stoot v. City of Everett*, 582 F.3d 910, 926 (9th Cir. 2009). See *Preschooler II v. Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1182 (9th Cir. 2007) (concluding that allegations that school officials knew of alleged violation and failed to take corrective action were sufficient to state a claim); *Harris v. Roderick*, 126 F.3d 1189, 1204 (9th Cir. 1997) (concluding that allegations that FBI agents developed a plan and then encouraged another agent to shoot a suspect were sufficient to state a claim); *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995) (concluding that failure to intervene to stop alleged violation could be sufficient to establish liability); *Redman v. Cty. of San Diego*, 942 F.2d 1435, 1446–47 (9th Cir. 1991) (en banc) (concluding that knowledge of a policy and practice of overcrowding that allegedly resulted in inmate's rape could be sufficient to establish liability), abrogated on other grounds by *Farmer v. Brennan*, 511 U.S. 825 (1994)

#### Chain of Causation and Intervening Force Analysis

515. In a Civil Rights conspiracy case, the injury and damage must flow from the overt acts ((*United States v. Sarault*, 840 F.2d 1479, 1487 (9th Cir. 1988) (holding that overt act **need only be concrete step** toward carrying out agreement, nor one that actually accomplishes goal of conspiracy); It can be a **wholly innocent act** in and of itself. See *United States v. Masiello*, 491 F. Supp. 1154, 1164 (D. S.C. 1980)).

516. Where the gravamen of the injury complained of is commitment to an institution by court order, this order of the court, right or wrong, is ordinarily the proximate cause of the injury. Various preliminary steps occur before the order is made. These preliminary steps

1 may range from such matters as filing of petitions to the various clerical and procedural activ-  
 2 ities which lead to the order. In the ordinary case, the order is made after a hearing in court or  
 3 after consideration by the court of the supporting documents and evidence. Therefore, the var-  
 4 ious preliminary steps would not cause damage unless they could be said to be the proximate  
 5 cause of the injury. In the usual case, the order of the court would be the proximate cause and  
 6 the various preliminary steps would be remote causes of any \*247 injury from imprisonment  
 7 or restraint under the court order. 268 F.2d at 296-97 (emphasis added). Over time, the law in  
 8 this area has developed around the general principle that the decision of an independent inter-  
 9 mediary "will only constitute an intervening cause if the decision is genuinely free from de-  
 10 ception or coercion." Hector, 235 F.3d at 164 (citing cases from the Second, Fifth, Seventh,  
 11 Eleventh, and D.C. Circuits) (Nygaard, J., concurring).

11 517. In Egervary v. Young, we recognized that "the actions of a judicial officer may  
 12 sever the chain of causation" between the wrongful act of a party who appeared before the ju-  
 13 dicial officer and the harm that befell another as a result. Id. at 246. In Egervary, we distin-  
 14 guished between a party's misrepresentations of law and **misrepresentations of fact** in deter-  
 15 mining whether the chain of causation was broken<sup>105</sup>. A judge's error of law is generally suffi-  
 16 cient to sever the chain of causation, even if a party misrepresented the state of the law to the  
 17 judge, because "it is axiomatic that, in any given case, the responsibility for determining the  
 18 governing law and procedures lies with the judge." Id. at 249. However, because a judge de-  
 19 pends on the party appearing before her to honestly state the facts relevant to the judge's deci-  
 20 sion, a judge's actions do not sever the chain of causation where the party makes "an inade-  
 21 quate or false representation of the factual basis upon which the legal ruling depended."

22  
 23  
 24 <sup>105</sup> In Huynh v. Wal-Mart Stores, Inc. et al., the RICO Defendants were so desperate to get  
 25 Huynh's case against Walmart dismissed in a clear, convincing, and powerful fashion in order  
 26 to reinforce the "Get Out of Jail Free" Card they got from the SEC that they not only misrep-  
 27 resented the facts (engaging in evidence fabrication, destruction, mutilation, and concealment  
 28 as well as committing perjuries) and the misrepresented the laws (shotgun pleaded five frivo-  
 lous and nefarious ADHD FEHA claims to impose the McDonnell Douglas framework upon  
 Huynh's SOX claims against Walmart) but they also offered things of value (**to be discov-  
 ered during discovery**) to District Judge Vince Chhabria and Magistrate Judge Sallie that  
 turned them into an **instrument of oppression** to serve in the WSF Coverup Enterprise.

**3****The RICO Defendant Overt Acts and Proximate Cause to Huynh's Injuries**

518. As discussed above, Theodore Boutros, Eugene Scalia, and Rachel Brass were at the top of the WSF Coverup Enterprise (they were the leaders of the Rescue Squad). They acted as the Walmart Participants' trusted legal advisor to help develop strategies and tactics as well as overseeing the execution of the WSF Coverup Enterprise' illegal coverup scheme in order to achieve the RICO Enterprise' common purpose. In some instances, they directly involved in the day-to-day operation of the RICO Enterprise for example offering things of value and/or improperly influence to the Federal Judges and Federal Officials due to their connections and/or reputation in the legal communities to act in Walmart's favor. Below are overt acts perpetrated by these RICO Defendants to deprive Huynh to his claim to his lawsuit against Walmart and his claim to his SEC Whistleblower Reward as afforded by the law.

**Violation of Huynh's Substantive Due Process Causing Injuries to Huynh's Properties**

519. Jointly developed the "Truth on the Market" Defense with the Walmart Participant then caused/directed the other RICO Defendants to operationalize them.

- A. Caused Walmart's executives and others (Robert Ohmes and Matthew Boyle etc.) to engage in the whitewashing campaign.
- B. Ordered David deRubertis to exploit Huynh's 3/15/18 complaint as a platform to whitewash evidence of Walmart's misleading statements.
- C. Ordered the other RICO Defendants and/or their Co-conspirators e.g., PR agencies and journalists to execute the "Truth on the Market" Defense on 3/15 and 3/16/18.
- D. Worked jointly with Orrick Herrington & Sutcliffe LLP, to jointly package factual misrepresentations then presented them to the SEC in order to improperly influence the SEC to issue Walmart the non-enforcement letter on 4/2/19.
- E. Developed the "Nuts & Sluts" strategy (prong #3 of the coverup plan) then ordered others execute it to diminish Huynh's credibility as a whistleblower.
- F. Upon information and belief, these RICO Defendants leveraged the list of SEC witness that David deRubertis leaked during the GO 71 disclosures to Walmart to coach and influence the testimonies of these witnesses to present factual misrepresentations to the SEC.

520. Jointly developed the strategy and execution plan for prong #3 with the Walmart Participants to misrepresent the facts and the Laws to attempt to get Huynh's civil



1 case against Walmart dismissed in a clear, convincing, and powerful fashion. Then caused  
2 other to executed this plan.

- 3 A. Directed David deRubertis to shotgun pleaded the five frivolous and nefarious  
4 ADHD FEHA claims against Walmart. Then get the other RICO Defendants to ex-  
5 ploit these claims to improperly gather Huynh's psychiatrist and personnel records  
6 then misrepresented the facts and laws (imposed the McDonnell Douglas framework  
7 to assess Huynh's SOX Claim.
- 8 B. Developed the evidence fabrication, destruction, mutilation, and concealment cam-  
9 paign then caused the other RICO Defendants to execute this plan e.g., cause David  
10 and Kari deRubertis, Garen Nadir, Doug Kasales, and Kathy Vonlindern to destroy  
11 evidence the outlook appointment calendar of Huynh's meeting with Seth Beal on  
12 Oct 4 and 18, 2016.
- 13 C. E-filed factual and legal misrepresentations in the United States Court of Appeals  
14 for the Ninth Circuit's Dockets (i.e., Walmart's answering brief) to support  
15 Walmart's motion for summary judgement to corruptly influence the denial of  
16 Huynh's appeal.

17 521. Offered Things of Value and/or Improperly Influenced District Judge Vince  
18 Chhabria and Magistrate Judge Sallie Kim to Turn them Into an Instruments of Oppression.

- 19 A. Caused District Judge Vince Chhabria to never ruled on Huynh's motion for leave to  
20 supplement to file material facts into the record in order to defend himself against  
21 Walmart's motion for summary judgment.
- 22 B. Caused District Judge Vince Chhabria to obstruct Huynh from filing his motion for  
23 reconsideration to appeal the dismissal of his complaint.
- 24 C. Caused District Vince Chhabria to immediately denied Huynh's motion for recon-  
25 sideration without forcing Walmart to file an opposition brief within three days after  
26 Huynh filed his motion for reconsideration.
- 27 D. Caused District Judge Vince Chhabria to abruptly cancel the oral argument for sum-  
28 mary judgement 2 days before the scheduled date.
- E. Caused District Judge Vince Chhabria to suppress material facts Huynh submitted in  
various court filings to rule that Huynh offered no evidence of pretext. For example,  
District Vince Chhabria didn't consider the material facts that Walmart hired 10  
people right smack in the middle the purported Marketplace RIF. See DC Dkt 178.
- F. Caused the United States Court of Appeals for the Ninth Circuit's merit panel to im-  
pose the improper and burdensome McDonnell Douglas upon Huynh's SOX case  
then suppressed the material evidence Huynh filed in the record with the court below  
to issue a one paragraph ruling to deny Huynh's appeal. See X.

1           522. Theodore Boutros, Eugene Scalia, and Rachel Brass corruptly influenced Dis-  
 2       trict Judge Vince Chhabria to bypass the United States District Court of the Northern District  
 3       of California's Local Rule on Motion Practice to deprive Huynh of his due process right.

4           A. Caused District Judge Vince Chhabria to bypass the Local Rules governing the Mo-  
 5       tion Practice to never rule on Huynh's motion for leave to supplement to file mate-  
 6       rial facts into the record to support the factual assertions in Huynh's opposite brief in  
 order to defend himself against Walmart's motion for summary judgement.

7           B. Caused District Judge Vince Chhabria to bypass the Local Rules governing Motion  
 8       Practice to deny Huynh's motion for reconsideration afforded under F.R.C.P Rule  
 9       59(e) within three days after it was filed without even requiring Walmart to file their  
 opposition brief.

10           523. Theodore Boutros, Eugene Scalia, and Rachel Brass violated Huynh's constitu-  
 11       tion right to equal protection under the Fifth Amendment by causing and/or directing District  
 12       Judge Vince Chhabria to discriminate against Huynh for no rational basis except to serve as  
 13       an instrument of oppression to effectuate the WSF Coverup Enterprise's illegal coverup  
 14       scheme.

15           A. Caused District Judge Vince Chhabria to suppressed the material facts in the records  
 16       which Huynh relied on to oppose Walmart's motion for summary judgement. Dis-  
 17       trict Judge used the lack of evidence as an excuse to grant Walmart summary judge-  
 18       ment and dismissed all of Huynh's claim against Walmart. For example, District  
 19       Judge Vince Chhabria purported stated in his ruling "Indeed, Huynh has produced  
 20       zero evidence of pretext". See DC Dkt. 167 at 5

21           B. Caused District Judge Vince Chhabria to deny Huynh's motion for reconsideration  
 22       to appeal District Judge Vince Chhabria entry of final judgement against Huynh  
 23       only three days after it was file for no rational basis. As a matter of fact, District  
 24       Judge Vince Chabbria lied about the nature of Huynh's 1/19/20 letter (DC Dkt. 170)  
 25       to deny Huynh's motion within going through the motion practice processed. Dis-  
 26       trict Judge Vince Chhabria treated Huynh differently compare to similarly situated  
 27       litigants that appear before his court.

1           524. The junior member of the Rescue Squad i.e., Chris Wilson, Ryan Stewart, and  
2 Susanna Schuemann, participated in the operations of the Enterprise to execute some of the  
3 overt acts as well as coordinating and supervising the other RICO Defendants to carry out the  
4 operations of the WSF Coverup Enterprise. Thus, the overt acts perpetrated by these Defend-  
5 ants were done to effectuate the strategy and implementation plans dictated by the leaders of  
6 the Rescue Squad as well as that of the Walmart participant. Below are some key over acts  
7 (not exhaustive but more than enough for Huynh to prove the causation element of his Biven  
8 Actions) committed by these Defendants in furtherance of the WSF Coverup Enterprise's ille-  
gal coverup scheme.

9           525. For example, Ryan Stewart, Chris Wilson, and Susanna Schuemann directed  
10 Renee Quezada at Lighthouse Global to fabricate Beal's 11/30/16 and RIF list, Melvenia Ha's  
11 Oct 17 interview notes. They also coordinated and directed David and Kari deRubertis,  
12 Garen Nadir, Doug Kasales, and Kathy Vonlindern to destroy Huynh's outlook calendar  
13 meeting with Beal on Oct 4 and Oct 18 of 2016, mutilate the headers of Huynh's outlook  
14 emails, and shifted the time in Huynh's documents by 8 hours in order to obstruct Huynh  
15 from using this evidence to defending himself against Walmart's motion for summary judge-  
16 ment.

17           526. Ryan Stewart, Chris Wilson, and Susanna Schuemann also e-filed fabricated  
18 documents (e.g., Audrey Au fabricated investigation report which purportedly substantiate the  
19 false sexual harassment charges against Huynh) and false declarations (Beal's and Ricetti  
20 false declaration that Huynh's role was eliminated when in facts it was not) to supported  
21 Walmart's motion for summary judgement to give District Judge Vince Chhabria as an excuse  
to dismiss Huynh's claim in a spectacular fashion.

22           527. The deRubertis Law Firm Participant i.e., David and Kari deRubertis, and  
23 Garen Nadir participated in the operations of the Enterprise by following the orders and direc-  
24 tions of the Rescue Squad to committed overt acts to effectuate the WSF Coverup Enter-  
25 prise's common purpose and in the process, they cause Huynh's injuries to his properties. Be-  
26 low are some key over acts (even though they were not exhaustive they were enough for  
27 Huynh to prove the causation element of Huynh's Biven Action claim.

- 1 A. As discussed in paragraph X, David deRubertis misrepresented the facts about the  
2 \$7 Mil customer return impact and the definition of Walmart's Marketplace to  
3 whitewash evidence of Walmart's illegal conducts.
- 4 B. David deRubertis delayed filing Huynh's complaint by 3 months to cause the other  
5 RICO Defendants to coverup Walmart's inflation of Walmart's Quarterly Ecom-  
6 merce Sales grow to obstruct the SEC investigation and influence the outcome of the  
7 SEC investigation.
- 8 C. David and Kari deRubertis, Garen Nadir, Doug Kasales, and Kathy Vonlindern en-  
9 gaged in evidence destruction and mutilation to prevent Huynh from using them to  
10 defend himself against Walmart.
- 11 D. David and Kari deRubertis leaked the list of SEC witnesses to the Rescue Squad  
12 during the GO 71 disclosure to cause the other RICO Defendants to communicate  
13 factual misrepresentations to the SEC to obstruct and/or influence the SEC to issue  
14 the Get Out of Jail Free Card to Walmart.
- 15 E. David deRubertis and Garen Nadir acted under the orders and directions of the Res-  
16 cue Squad to intentionally omit system metadata fields from the Joint Stipulation  
17 ESI Protocol order DC Dkt. 136 to obstruct Huynh from authenticating and im-  
18 peaching Walmart's purported material facts (e.g., Beal's fabricated 11/30/16 and  
19 RIF list and Melvenia Ha's fabricated Oct 17 interview note) to defend himself  
20 against Walmart's motion for summary judgement.

21 528. In summary, David and Kari deRubertis, Garen Nadir, Doug Kasales, and  
22 Kathy Vonlindern committed the over acts above to effectuate the WSF Coverup Enterprise  
23 but in the process, they caused injuries to Huynh's properties by violated Huynh's substantive  
24 due process right and equal protection right afforded by the Fifth Amendment of the US Con-  
25 stitution.

26 529. Walmart's Board of Directors e.g., Greg Penner, Rob Watson, and Timothy  
27 Flynn knew about WSF Coverup Enterprise Plan (after Huynh emailed these Defendants on  
28 Dec 13, 2018, Rachel Brand announced Jay Jorgensen's exit from Walmart the very next day.  
Subsequently, beginning in early 2019, the Walmart participants engaged in the reverse  
whitewashing campaign). These Defendants caused injuries to Huynh's properties by not in-  
tervening to stop the other RICO Defendants illegal acts. See *Preschooler II v. Clark Cty.*



1 Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th Cir. 2007) (concluding that allegations that school  
2 officials knew of alleged violation and failed to take corrective action were sufficient to state  
3 a claim); Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995) (concluding that failure to  
4 intervene to stop alleged violation could be sufficient to establish liability).

5  
6 530. Similarly, the other Walmart Participants (i.e., Doug McMillon, Brett Biggs,  
7 Marc Lore, Rachel Brand, Jeff Gerhart, Jay Jorgensen, Karen Roberts, Kerry Kotous, and  
8 Doe(s)) were the leaders of the WSF Coverup Enterprise. They jointly developed the WSF  
9 Coverup Enterprise's illegal coverup scheme. As a matter of facts, Doug McMillon, Brett  
10 Biggs, and Marc Lore were also engaged in the whitewashing scheme to make factual misrep-  
11 resentations to mislead the SEC and/or the DOJ, Walmart's investors, investment analysts, the  
12 Media, politicians, and the America public in order to effectuate the RICO Enterprise's illegal  
13 coverup scheme.  
14

15  
16 531. As discussed above, the other RICO Defendants namely, the Unknown PR  
17 Agencies (to be discovered during discovery), Matthew Boyle, Bloomberg News' Reporter.  
18 Lighthouse Global (Renee Q, and Doe(s)), William Thompson (SEC officials), and Doe(s)  
19 were integral participants in the conspiracy with the other RICO Defendants to commit overt  
20 acts which they knew or should have known will cause injuries to Huynh's properties.  
21

22 532. In summary, each of the RICO Defendant knowingly participated in a conspir-  
23 acy with federal officials and has engaged in overt acts, as described above in furtherance of  
24 the WSF Coverup Enterprise's illegal common purpose i.e., to conceal Walmart's \$140 Bil  
25 fraud against shareholders. As a foreseeable result of these overt acts, Huynh was injured in  
26 his properties which include but are not limited to the loss of Huynh's SEC Whistleblower  
27  
28

1 award and the loss of Huynh's civil lawsuit against Walmart, Huynh's personal and profes-  
2 sion reputation, and the costs to appeal District Judge Vince Chhabria's dismissal of Huynh's  
3 complaint with the United States Court of Appeals for the Ninth Circuit.

4  
5 533. Furthermore, the overt acts committed by the RICO Defendants in furtherance  
6 of the WSF Coverup Enterprise's common purpose, caused injuries to Huynh's constitutional  
7 properties through the violations of Huynh's rights under the Fifth Amendment of the US  
8 Constitution. Namely, The RICO Defendants robbed Huynh's right to procedural and substan-  
9 tive due process and equal protection under law (class of one).

10  
11 534. Further, as a direct and foreseeable result of the aforesaid acts of said Defend-  
12 ants, Plaintiff has suffered and will suffer harm for which Plaintiff is entitled to general and  
13 special damages and all appropriate compensatory relief.

14  
15 535. Defendants' conduct was a substantial factor in causing that harm. The above-  
16 described acts of Defendants, including by and through their managing agents, officers, or di-  
17 rectors, were engaged in with a deliberate, cold, callous, fraudulent, and intentional manner in  
18 order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff's rights.  
19 Such acts were despicable and constitute malice, fraud, and/or oppression. Plaintiff requests  
20 an assessment of punitive damages against Defendants in an amount to be assessed at time of  
21 trial.  
22  
23  
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28

**CLAIMS FOR RELIEF**  
**FOURTH CLAIM FOR RELIEF**  
(Violations of 42 U.S.C. § 1985(3))  
(Against All RICO Defendants)

**Framework to Evaluate a 42 U.S.C. 1985(3) Action**

536. Section 1985(3) of the Civil Rights Act of 1964 provides a civil remedy for conspiracies to interfere with **constitutionally or federally protected** rights when motivated by invidiously discriminatory animus. See *Griffin v. Breckenridge*, 403 U.S. 88, 102-03 (1971).

537. Under Section 1985(3), a plaintiff must show: (1) a conspiracy; (2) an act in furtherance of the conspiracy; (3) an intent to deprive any person of the equal protection of, or equal privileges and immunities under, the law; and (4) a resulting injury to a legal right or privilege. See *Great American Federal Savings & Loan Assoc. v. Novotny*, 442 U.S. 366, 373 (1979) (quoting *Griffin v. Breckenridge*, 403 U.S. at 102). See *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (citation omitted). A racial, or perhaps **otherwise class-based**<sup>106</sup>, invidiously discriminatory animus is an indispensable element of a section 1985(3) claim. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 989 (9th Cir. 2001) (quotations and citation omitted). A claim for violation of section 1985(3) requires the existence of a conspiracy and an act in furtherance of the conspiracy. *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005) (citing *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992)). A mere allegation of conspiracy is insufficient to state a claim. *Id.* at 676-77

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<sup>106</sup> In *Village of Willowbrook v. Olech* 528 U.S. 562 (2000), the Supreme Court wrote: "Our cases have recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336 (1989). In so doing, we have explained that "[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Sioux City Bridge Co.*, *supra*, at 445 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352 (1918))."

1           538. Huynh realleges and incorporates herein by reference each and every fore-  
 2 going paragraph of this Amended Complaint as if set forth in full. Specifically, this  
 3 claim incorporated all the factual allegations in claim No. 1, No. 2, and No.3.

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 5           539. As discussed in paragraph above, Huynh proved that the RICO Defendant  
 6 entered into an implicit agreement to conspire to commit overt acts in furtherance of the  
 7 WSF Coverup Enterprise's illegal common purpose. Furthermore, these overt acts as  
 8 pleaded above caused (foreseeable that) the Rescue Squad, the Walmart participants, and  
 9 the other RICO Defendants to submit factual misrepresentations (e.g., fabrication, de-  
 10 struction, mutilation, concealment and filing false declarations, and evidence whitewash-  
 11 ing etc.) to the SEC and the United States District Court of the Northern District of Cali-  
 12 fornia). Ultimately these factual misrepresentations led the SEC to issue Walmart a "Get  
 13 Out of Jail" Fee card i.e., the SEC stopped their investigation into Walmart's \$140 Bil  
 14 fraud against shareholders for no rational basis if not for the overt acts of each of these  
 15 RICO Defendants. Additionally, the GDC Squad and the Walmart Participants submitted  
 16 factual and legal misrepresentations in support to Walmart's motion for summary judge-  
 17 ment. Using these factual misrepresentations (evidence destruction, fabrication, mutila-  
 18 tion, and concealment as well as filing false declaration), the Rescue Squad and the  
 19 Walmart participants corruptly influence District Judge Vince Chhabria to discriminate  
 20 against Huynh to dismiss Huynh's claims against Walmart. Subsequently, District Judge  
 21 Vince Chhabria denied Huynh's motion for reconsideration within three days after it was  
 22 filed by bypassing the United States District Court for the Northern District of California  
 23 Local Rule 7-2 and 7-3 on motion practice. As discussed above, District Judge Vince  
 24 Chhabria treated other similarly situated litigants that appeared before him different than  
 25 Huynh. In short, if not for the overt acts of each of the RICO Defendants above, District



1 Judge Vince Chhabria would have not deprived Huynh of his right to Equal Protection  
2 under the class of one.

3  
4 540. The overt acts perpetrated by each and every member of the RICO De-  
5 fendants caused injuries to Huynh's constitutional properties because these acts lead Dis-  
6 trict Vince Chhabria and the SEC to treat Huynh differently than others for no rational  
7 basis. Therefore, these RICO Defendants violated Huynh's Fifth Amendment right to  
8 equal protection under (class of one).

9  
10 541. In summary, each of the RICO Defendant knowingly participated in a  
11 conspiracy among themselves and other Federal Officials and has engaged in overt acts,  
12 as described above in furtherance of the WSF Coverup Enterprise's illegal common pur-  
13 pose i.e., to conceal Walmart's \$140 Bil fraud against shareholders. As a foreseeable re-  
14 sult of these overt acts, Huynh was injured in his properties which include but are not  
15 limited to the loss of Huynh's SEC Whistleblower award, the loss of Huynh's civil law-  
16 suit against Walmart, damage to Huynh's personal and profession reputation, and the  
17 costs to Huynh in appealing District Judge Vince Chhabria's dismissal of his complaint  
18 with the United States Court of Appeals for the Ninth Circuit.

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21 542. Further, as a direct and foreseeable result of the aforesaid acts of said De-  
22 fendants, Plaintiff has suffered and will suffer harm for which Plaintiff is entitled to gen-  
23 eral and special damages and all appropriate compensatory relief.

24  
25 543. Defendants' conduct was a substantial factor in causing that harm. The  
26 above-described acts of Defendants, including by and through their managing agents, of-

1     ficers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and inten-  
 2     tional manner in order to injure and damage Plaintiff and/or with a conscious disregard of  
 3     Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppres-  
 4     sion. Plaintiff requests an assessment of punitive damages against Defendants in an  
 5     amount to be assessed at time of trial.  
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7  
 8                   **CLAIMS FOR RELIEF**  
 9                   **FIFTH CLAIM FOR RELIEF**  
 10                  (Violations of 42 U.S.C. § 1986)  
                   (Named RICO Defendants)

11           42 U.S.C. § 1986 provides that:

12           Every person who, having knowledge that any of the wrongs conspired to be done,  
 13           and mentioned in section 1985 of this title, are about to be committed, and having  
 14           power to prevent or aid in preventing the commission of the same, neglects or refuses  
 15           so to do, if such wrongful act be committed, shall be liable to the party injured, or his  
 16           legal representatives, for all damages caused by such wrongful act, which such person  
 17           by reasonable diligence could have prevented; and such damages may be recovered in  
 18           an action on the case. . . . 42 U.S.C.A. § 1986 (West 1981). Thus, § 1986 constitutes  
           an additional safeguard for those rights protected under 42 U.S.C. § 1985, and "trans-  
           gressions of § 1986 by definition depend on a preexisting violation of § 1985. . . ."  
           Rogin v. Bensalem Township, 616 F.2d 680, 696 (3d Cir. 1980), cert. denied, 450  
           U.S. 1029, 101 S.Ct. 1737, 68 L.Ed.2d 223 (1981).

19           Additionally, a § 1986 plaintiff must show that: (1) the defendant had actual  
 20           knowledge of a § 1985 conspiracy, (2) the defendant had the power to prevent or aid  
 21           in preventing the commission of a § 1985 violation, (3) the defendant neglected or re-  
 22           fused to prevent a § 1985 conspiracy, and (4) a wrongful act was committed. See Pe-  
 23           rez v. Cucci, 725 F. Supp. 209, 254 (D.N.J. 1989) (citations omitted), aff'd, 898 F.2d  
           142 (3d Cir. 1990); Chester J. Antieau Gary E. \*1296 Bair, Federal Civil Rights Acts  
           § 281 (1980 Supp. 1993).

24           544.   The "Name Defendants" in this cause of actions are those RICO Defend-  
 25           ants who acted at the supervisor level who knew the existence of the WSF Coverup En-  
 26           terprise's illegal conducts scheme but failed to perform to fulfill their official duties to  
 27           stop the Huynh's injuries. The Defendants for this cause of action are: Greg Penner, Rob  
 28

1 Watson, Timothy Flynn, Doug McMillion, Brett Biggs, Marc Lore, Rachel Brand, Jeff  
2 Gerhart, Jay Jorgensen, Karen Roberts, Kerry Kotous, Theodore Boutros, Eugene Scalia,  
3 Rachel Brass, and David deRubertis.

4  
5 545. Huynh realleges and incorporates herein by reference each and every fore-  
6 going paragraph of this Amended Complaint as if set forth in full. Specifically, this claim  
7 is a derivative of the fourth claim.  
8

9 546. As discussed above, Huynh emailed Walmart's Board of Directors namely  
10 Greg Penner, Rob Watson, and Timothy Flynn on Dec 13, 2108. Subsequently, Walmart  
11 Participants with the aid and assistance of the leaders of the Rescue Squad (Theodore  
12 Boutros, Eugene Scalia, and Rachel Brass) began a reverse whitewashing campaign to  
13 coverup the facts that the RICO Defendants engaged in the original whitewashing cam-  
14 paign to coverup Walmart's \$140 Bil fraud against shareholder. Therefore, Greg Penner,  
15 Rob Watson, Timothy Flynn, Doug McMillion, Brett Biggs, Marc Lore, Rachel Brand,  
16 Jeff Gerhart, Jay Jorgensen, Karen Roberts, Kerry Kotous, Theodore Boutros, Eugene  
17 Scalia, and Rachel Brass had knowledge about the conspiracy among the members of the  
18 WSF Coverup Enterprise to cause injuries to Huynh's properties, and had the power to  
19 prevented from happening but refused to do so.  
20  
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22 547. In summary, the named RICO Defendants above, knew the existence of a  
23 conspiracy to cause injuries to Huynh in violation of 18 USC 1985(3), had the power to  
24 stop the injuries but refused to do so. As a result of their inactions, Huynh suffered inju-  
25 ries to his property (through deprivation of Huynh's constitutional right to equal protec-  
26 tion (class of one) under law afforded by the Fifth Amendment of the US Constitution)  
27 which included but not limited to the loss of Huynh's whistleblower award, the loss of  
28

1 Huynh's civil lawsuit against Walmart, damaged to Huynh's personal and profession rep-  
 2 putation, and the costs Huynh incurred to appeal District Judge Vince Chhabria's dismissal  
 3 of his complaint against Walmart.

4  
 5 548. Further, as a direct and foreseeable result of the aforesaid acts of said De-  
 6 fendants, Plaintiff has suffered and will suffer harm for which Plaintiff is entitled to gen-  
 7 eral and special damages and all appropriate compensatory relief.

8  
 9 549. Defendants' conduct was a substantial factor in causing that harm. The  
 10 above-described acts of Defendants, including by and through their managing agents, of-  
 11 ficers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and inten-  
 12 tional manner in order to injure and damage Plaintiff and/or with a conscious disregard of  
 13 Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppres-  
 14 sion. Plaintiff requests an assessment of punitive damages against Defendants in an  
 15 amount to be assessed at time of trial.  
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 19 **CLAIMS FOR RELIEF**  
 20 **SIXTH CLAIM FOR RELIEF**

21 (Abuse of Process)  
 (Named Defendants)

22 550. "[T]he essence of the tort of abuse of process [is] ... misuse of the power  
 23 of the court; it is an act done in the name of the court and under its authority for the pur-  
 24 pose of perpetrating an injustice.' [Citation.]. The tort is defined in the restatement \*876  
 25 as follows: "One who uses a legal process . . . against another to accomplish a purpose for  
 26 which it is not designed is liable to the other for the pecuniary loss caused thereby."  
 27 (Rest., Torts, § 682, p. 464; Spellens v. Spellens (1957) 49 Cal.2d 210, 231 [ 317 P.2d  
 613]; Tranchina v. Arcinas (1947) 78 Cal.App.2d 522, 525 [ 178 P.2d 65].)



1           551. To establish a cause of action for abuse of process, a plaintiff must plead  
2 two essential elements: that the defendant (1) entertained an ulterior motive in using the  
3 process and (2) committed a willful act in a wrongful manner. (See Templeton Feed  
4 Grain v. Ralston Purina Co. (1968) 69 Cal.2d 461, 466 [ 72 Cal.Rptr. 344, 446 P.2d 152];  
5 5 Witkin, Cal. Procedure (3d ed. 1985) Pleading, § 709, p. 158.)

6           552. For purposes of abuse of process, the ulterior motive to prove is that the  
7 party employing the process did so for an end not germane thereto. (Debt Collection Tort  
8 Practice (Cont.Ed.Bar 1971) § 5.19, p. 129.) And, an improper purpose may consist in  
9 **achievement of a benefit totally extraneous to or of a result not within its legitimate**  
10 **scope.** (Templeton Feed Grain v. Ralston Purina Co., supra, 69 Cal.2d at p. 466; Spellens  
11 v. Spellens, supra, 49 Cal.2d at p. 231.) A cause of action for abuse of process cannot be  
12 viable absent some harm to the plaintiff caused by the abuse of process. (Rest. 2d Torts §  
13 682; CACI No. 1520.) Thrivent argues that the "willful act in the use of the process not  
14 proper in the regular conduct of the proceedings" (Rusheen, supra, 37 Cal.4th at pp.  
15 1056–1057, 39 Cal.Rptr.3d 516, 128 P.3d 713)

16           553. The Named Defendants for this cause of action are: Doug McMillion,  
17 Brett Biggs, Marc Lore, Rachel Brand, Theodore Boutros, Eugene Scalia, Rachel Brass,  
18 Chris Wilson, Ryan Stewart, Susanna Schuemann, and David deRubertis

19           554. Huynh realleges and incorporates herein by reference each and every fore-  
20 going paragraph of this Complaint as if set forth in full.  
21

22           555. As discussed above, the RICO Defendants caused David deRubertis to  
23 shotgun pleaded five frivolous FEHA ADHD claims against Walmart in Huynh's 3/15/18  
24 complaint in order to put Huynh's ADHD condition and Huynh's motive for engaging in  
25 protected conducts to abuse the discovery process to viciously go after Huynh's psychia-  
26 trist and medical records, and Huynh's employment to execute the RICO Defendants'  
27 "Nuts & Sluts" Defense strategy to discredit Huynh's credibility as a whistleblower. This  
28

1 was one of the key factors that led the SEC to issue Walmart a Get Out of Jail Free Card.  
2 Additionally, using these frivolous claims the Rescue Squad and the Walmart Participants  
3 misrepresented the facts and the laws in their court filings in support of Walmart motion  
4 for summary. Then corruptly influenced District Judge Vince Chhabria to dismiss  
5 Huynh's lawsuit against Walmart in a such a clear, convincing and powerful fashion that  
6 further misled the SEC and/or DOJ, Walmart's investors, investment analysts, the Media,  
7 politicians, and the American public to purportedly claim Walmart's innocence with re-  
8 gard to Walmart's \$140 Bil fraud against shareholders.  
9

10  
11 556. In short, the RICO Defendants, namely, Doug McMillion, Brett Biggs,  
12 Marc Lore, Rachel Brand, Theodore Boutros, Eugene Scalia, Rachel Brass, Chris Wilson,  
13 Ryan Stewart, Susanna Schuemann, and David deRubertis exploited the judicial process  
14 in the Huynh vs. Wal-Mart Stores Inc. litigation for ulterior motives i.e., to obtain the  
15 "Get Out of Jail Free" Card, the "Civil Penalties Free" Card, and ensure a civil and crimi-  
16 nal risk-free future for all the RICO Defendants.  
17

18 557. In summary, the named RICO Defendants exploited the civil litigation  
19 process as an instrument of injustice and oppression to achieve their own personal benefit  
20 in order to effectuate the WSF Coverup Enterprise's illegal coverup scheme to cash in on  
21 the Billion-dollar bounty. As a foreseeable result of these actions, they caused injuries to  
22 Huynh's properties which include but are not limited to the loss of Huynh's SEC Whis-  
23 tleblower award, the loss of Huynh's civil lawsuit against Walmart, damaged to Huynh's  
24 personal and profession reputation, and the costs to Huynh in appealing District Judge  
25 Vince Chhabria's dismissal of his complaint with the United States Court of Appeals for  
26 the Ninth Circuit.  
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of one's medical history. (Jones v. Superior Court (1981) 119 Cal.App.3d 534, 548-550 [ 174 Cal.Rptr. 148].) And, an "individual's right to privacy encompasses not only the state of his mind, but also his viscera, detailed complaints of physical ills, and their emotional overtones." (Board of Medical Quality Assurance v. Gherardini (1979) 93 Cal.App.3d 669, 679 [ 156 Cal.Rptr. 55].) Most recently, the California Supreme Court has stated: "[¶] If there is a quintessential zone of human privacy it is the mind. Our ability to exclude others from our mental processes is intrinsic to the human personality." (Long Beach City \*843 Employees Assn. v. City of Long Beach (1986) 41 Cal.3d 937, 944, fn. omitted [ 227 Cal.Rptr. 90, 719 P.2d 660].)

563. "[A] plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by the defendant constituting a serious invasion of privacy." (7 Cal.4th at pp. 39-40.).

564. **Element No. 1:** It is undisputed that a Plaintiff has a legally protected privacy interest in his/her mental health records.<sup>107</sup> (Pettus v. Cole (1996) 49 Cal.App.4th 402, 440 [ 57 Cal.Rptr.2d 46]; Cutter v. Brownbridge (1986) 183 Cal.App.3d 836, 842 [ 228 Cal.Rptr. 545] and cases cited therein. A stranger's unauthorized reading and dissemination of a person's mental health records is a serious invasion of the person's privacy. (Cf. Pettus v. Cole, supra, 49 Cal.App.4th at p. 445.) "Because of the sensitive nature of the problems for which individuals consult psychotherapists, disclosure of confidential communications made during counseling sessions may cause embarrassment or disgrace.

565. **Element No. 2:** The necessity in judicial proceedings for ascertaining the truth is sufficiently compelling to justify disclosure of constitutionally protected information when narrowly limited to information directly relevant to the issues (In re

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<sup>107</sup> As the United States Supreme Court recognized in Jaffee v. Redmond (1996) \_\_\_ U.S. \_\_\_, \_\_\_ [ 116 S.Ct. 1923, 1928, 135 L.Ed.2d 337]. The federal privilege, which clearly applies to psychiatrists and psychologists, also extends to confidential communications made to licensed social workers in the course of psychotherapy. The reasons for recognizing the privilege for treatment by psychiatrists and psychologists apply with equal force to clinical social workers, and the vast majority of States explicitly extend a testimonial privilege to them.



1 Lifschutz, supra, 2 Cal.3d at p. 435) and when good cause and materiality to the action  
 2 establish that the need for disclosure outweighs the right to privacy. (Board of Medical  
 3 Quality Assurance v. Gherardini, supra, 93 Cal.App.3d 669, 679.) Although a patient has  
 4 a constitutionally protected interest in information contained in his or her medical, psy-  
 5 chiatrists', and psychologists' files, disclosure may be appropriate in narrowly limited  
 6 circumstances to serve a compelling interest. (Board of Medical Quality Assurance v.  
 7 Gherardini, supra, 93 Cal.App.3d 669, 680-681; Jones v. Superior Court, supra, 119  
 8 Cal.App.3d 534, 550.). Per the case law below, neither David deRubertis nor the GDC  
 9 squad and Walmart had the right to obtain Huynh's record dating back to a quarter center  
 ago.

10 566. In the context of discovery of confidential information in **personnel files**,  
 11 even when such information is directly relevant to litigation, discovery will not be per-  
 12 mitted until a balancing of the compelling need for discovery against the fundamental  
 13 right of privacy determines that disclosure is appropriate. (Board of Trustees v. Superior  
 14 Court (1981) 119 Cal.App.3d 516, 525 [ 174 Cal.Rptr. 160].) And, even when the bal-  
 15 ance tips in favor of disclosure, constitutional concerns require a strict circumscription of  
 the scope of the disclosure. (Id., at p. 526.).

16 567. In short, the case laws above stated that 1) Huynh's psychiatrist records,  
 17 medical records and personnel files are protected from disclosure under the California  
 18 Constitution right to privacy and 2) Huynh only waived his constitutional right to privacy  
 19 to keep his psychiatrist and medical records and personnel shield from disclosure only if  
 20 he put his medical conditional (ADHD FEHA related disability claims) and his motives  
 21 engaging in protected activities (ADHD FEHA discrimination and retaliation employ-  
 22 ment claims) at the center of his lawsuits against Walmart.

23 568. The Named Defendants for this cause of action are: Doug McMillion,  
 24 Brett Biggs, Marc Lore, Rachel Brand, Theodore Boutros, Eugene Scalia, Rachel Brass,  
 25 Chris Wilson, Ryan Stewart, Susanna Schuemann, Kari deRubertis, David deRubertis,  
 26 Doug Kasales, and Kath Von Lindern.

1           569. Huynh realleges and incorporates herein by reference each and every fore-  
2 going paragraph of this Complaint as if set forth in full.

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4           570. As discussed above, the Rescue Squad ordered David deRubertis to shot-  
5 gun pleaded five nefarious and frivolous ADHD FEHA claims even though Huynh told  
6 David deRubertis that his SOX retaliation claim against Walmart was open and shut. If  
7 not for the named RICO Defendants' action, the GDC Squad and David deRubertis  
8 would not have been able to invade Huynh's right to constitutional privacy by going after  
9 Huynh's psychiatrist records, medical records, and personnel file viciously to effectuate  
10 prong #2 and #3 of the WSF Coverup Enterprise' illegal coverup scheme. Most disturb-  
11 ingly, David and Kari deRubertis falsified Huynh's signature to obtain his psychiatrist  
12 records then produced them under the table without the confidential designation for no  
13 rational basis except the effectuate prong #2 and #3 of the illegal coverup scheme.

14  
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16           571. In summary, the analysis above proved that Doug McMillion, Brett  
17 Biggs, Marc Lore, Rachel Brand, Theodore Boutros, Eugene Scalia, Rachel Brass, Chris  
18 Wilson, Ryan Stewart, Susanna Schuemann, Kari deRubertis, David deRubertis, Doug  
19 Kasales, and Kath Von Lindern violated Huynh's right to constitutional privacy which  
20 cause injuries to Huynh's properties which include but not limited the loss of Huynh's  
21 SEC Whistleblower award, the loss of Huynh's civil lawsuit against Walmart, damaged  
22 to Huynh's personal and profession reputation, and the costs for Huynh in appealing Dis-  
23 trict Judge Vince Chhabria's dismissal of his complaint with the United States Court of  
24 Appeals for the Ninth Circuit.

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27           572. As a direct and foreseeable result of the aforesaid acts of said Defendants,  
28 Plaintiff has suffered and will suffer harm for which Plaintiff is entitled to general and

1 special damages and all appropriate compensatory relief.

2  
3 573. Defendants' conduct was a substantial factor in causing that harm. The  
4 above-described acts of Defendants, including by and through their managing agents, of-  
5 ficers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and inten-  
6 tional manner in order to injure and damage Plaintiff and/or with a conscious disregard of  
7 Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppres-  
8 sion within the meaning of Civil Code section 3294. Plaintiff requests an assessment of  
9 punitive damages against Defendants in an amount to be assessed at time of trial.  
10

11 **CLAIMS FOR RELIEF**  
12 **EIGHT CLAIM FOR RELIEF**  
13 (Fraud)  
14 (All RICO Defendants)

15 574. Huynh realleges and incorporates herein by reference each and every fore-  
16 going paragraph of this Complaint as if set forth in full.

17 575. Defendants and their agents have knowingly filed fabricated, mutilated ev-  
18 idence and false declarations as well as submitting factual and legal misrepresentation in  
19 their court filings with both the United States District Court of Northern California and  
20 the United States Court of Appeals for the Ninth Circuit. Additionally, the RICO Defend-  
21 ants engaged in a criminal whitewash campaign to erase evidence of Walmart's fraud  
22 against shareholders then engaged in the purported "True on the Market" Defense to mis-  
23 lead the SEC and/or DOJ, Walmart's shareholders, investment analysts, the media, politi-  
24 cians, and the American public into believing that Walmart was innocent of committing  
25 fraud against shareholders to the tune of \$140 Bil. Each and every Defendant has person-  
26 ally engaged in this conduct, or knew or should have known that other Defendants were  
27  
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1 engaged in it on his or her behalf. These false representations are detailed throughout this  
2 Complaint and include the evidence fabrication, evidence destruction, misrepresentations  
3 in Robert Ohmes' investment reports and in numerous Bloomberg News article published  
4 by Matthew Boyle.  
5

6 576. Defendants made these false representations while knowing that their mis-  
7 representations were materially false and/or that their omissions were material. Defend-  
8 ants further made these misrepresentations, half-truth statements and/or omissions with  
9 the intent of getting the SEC and/or the DOJ to issue them the non-enforcement letter and  
10 to get District Judge Chabbria to dismiss all of Huynh's claims against Walmart.  
11

12 577. These material misrepresentations and/or omissions have been reasonably  
13 and justifiably relied upon by Huynh, the U.S. courts, state and federal government agen-  
14 cies officials e.g., the SEC and/or the DOJ, Walmart's shareholders, investors, analysts,  
15 and the media by means of its acceptance of Defendants' misrepresentations and omis-  
16 sions and their failure to take meaningful corrective action.  
17

18 578. As a direct, proximate, and foreseeable result of Defendants' fraud, Huynh  
19 has been harmed, including but not limited to the loss of 1) Huynh's claim to his SEC  
20 Whistleblower award, 2) Huynh's claim to his lawsuit against Walmart, 3) damaged to  
21 Huynh's personal and professional reputation and good name, and 4) costs to appeal Dis-  
22 trict Judge Vince Chhabria's dismissal of Huynh's Lawsuit.  
23

24 579. As a direct and foreseeable result of the aforesaid acts of said Defendants,  
25 Plaintiff has suffered and will suffer harm for which Plaintiff is entitled to general and  
26 special damages and all appropriate compensatory relief.  
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580. Defendants' conduct was a substantial factor in causing that harm. The above-described acts of Defendants, including by and through their managing agents, officers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppression within the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages against Defendants in an amount to be assessed at time of trial.

**CLAIMS FOR RELIEF**  
**NINTH CLAIM FOR RELIEF**  
 (Civil Conspiracy)  
 (All RICO Defendants)

581. Huynh realleges and incorporates herein by reference each and every foregoing paragraph of this Amended Complaint as if set forth in full.

582. As set forth above, Defendants have committed torts against Huynh, including acts of racketeering giving rise to violations of RICO, Biven Action, 18 USC 1985(3), 18 USC 1986, abuse of process, invasion of privacy, and fraud.

583. Defendants agreed to participate in a common scheme against Huynh. Defendants intentionally participated in the furtherance of WSF Coverup Enterprise's illegal coverup scheme in order to achieve the criminal enterprise common purpose to conceal Walmart's \$140 Bil fraud against shareholders. This action caused direct injuries to Huynh's property. In furtherance of this plan or purpose, Defendants committed overt and unlawful acts, including acts of racketeering as alleged herein.

584. As a direct, proximate, and foreseeable result of Defendants' fraud, Huynh

1 has been harmed, including but not limited to the loss of 1) Huynh's claim to his SEC  
2 Whistleblower award, 2) Huynh's claim to his lawsuit against Walmart, 3) dam-aged to  
3 Huynh's personal and professional reputation and good name, and 4) costs to appeal Dis-  
4 trict Judge Vince Chhabria's dismissal of Huynh's Lawsuit  
5

6 585. As a direct and foreseeable result of the aforesaid acts of said Defendants,  
7 Plaintiff has suffered and will suffer harm for which Plaintiff is entitled to general and  
8 special damages and all appropriate compensatory relief.  
9

10 586. Defendants' conduct was a substantial factor in causing that harm. The  
11 above-described acts of Defendants, including by and through their managing agents, of-  
12 ficers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and inten-  
13 tional manner in order to injure and damage Plaintiff and/or with a conscious disregard of  
14 Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppres-  
15 sion within the meaning of Civil Code section 3294. Plaintiff requests an assessment of  
16 punitive damages against Defendants in an amount to be assessed at time of trial.  
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